

REPORT

of the

ATTORNEY GENERAL

of the

STATE OF FLORIDA

FROM JANUARY 1, 1935, TO DECEMBER 31, 1936

CARY D. LANDIS
ATTORNEY GENERAL



Tallahassee, Fla.

1936



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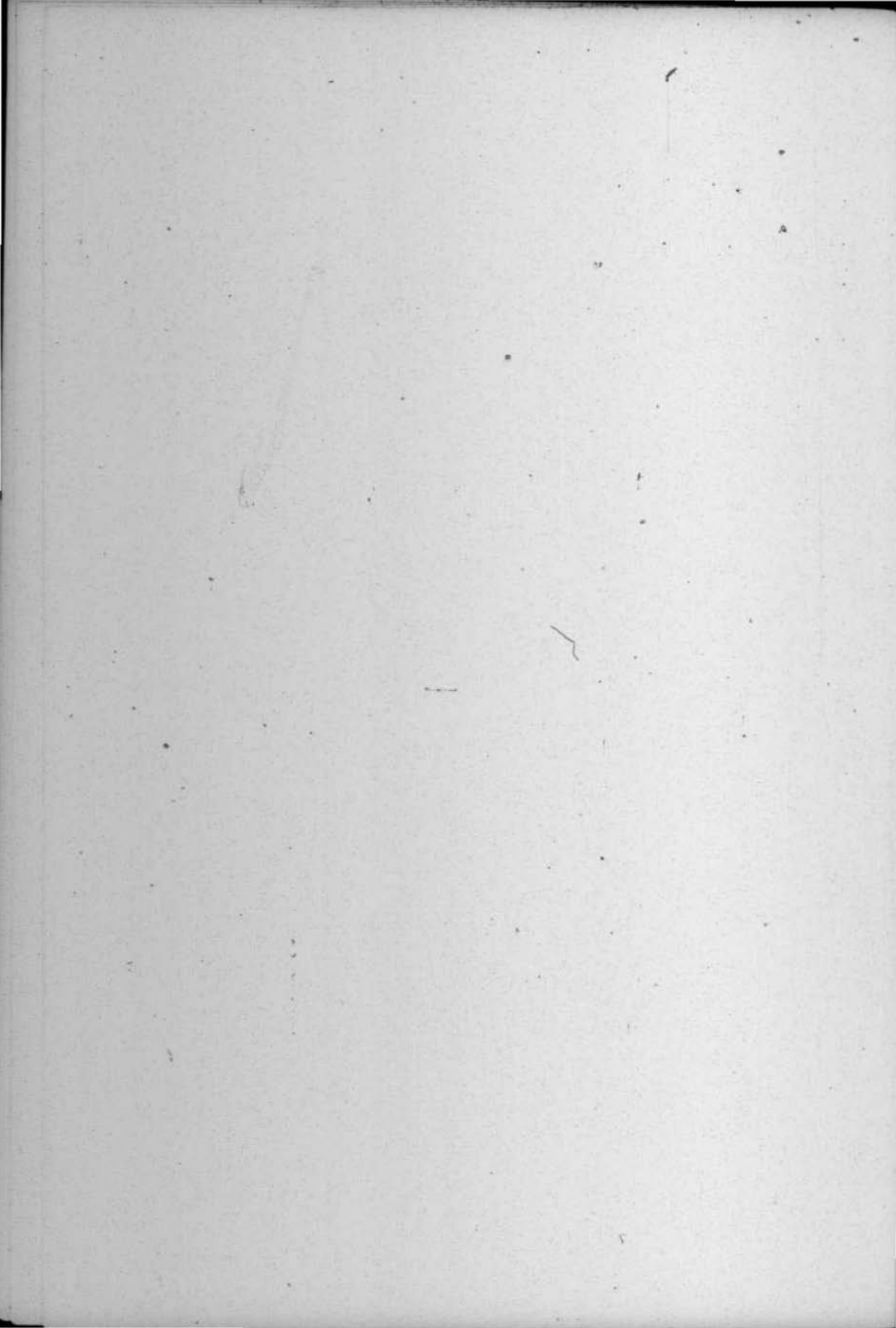
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I.

STATE LAW DEPARTMENT

CARY D. LANDIS	Attorney General
H. E. CARTER	Assistant Attorney General
ROY CAMPBELL	Assistant Attorney General
MARVIN C. McINTOSH	Assistant Attorney General
ROBERT J. PLEUS ¹	Assistant Attorney General
J. V. KEEN ²	Assistant Attorney General
IRA A. HUTCHISON ³	Assistant Attorney General
JOHN L. GRAHAM	Assistant Attorney General
JAMES B. WATSON	Assistant Attorney General
W. P. ALLEN	Assistant Attorney General
MRS. ALLIE YAWN BROWN	Law Clerk and Bookkeeper
MRS. MARGARET E. GANNON	Law Clerk and Stenographer
MISS EVELYN DAVIS	Law Clerk and Stenographer
MISS LORRAINE WARE	Secretary and Stenographer
MRS. BERTA W. BOHLER	Stenographer
MRS. CHRISTINE REEVES ROBERTS ⁴	Stenographer
MISS HATTIE ROEBUCK	Stenographer
MISS FRANCES BOND	Stenographer
MISS MARION GARDNER	Stenographer
MRS. ERMA K. VASON	File Clerk

¹ Resigned Dec. 15, 1935.

² Resigned Oct. 31, 1936.

³ Resigned and Commissioned Circuit Judge Nov. 5, 1935.

⁴ Resigned Dec. 31, 1936.

II.

ATTORNEYS GENERAL OF FLORIDA

1845-1936

JOSEPH BRANCH	1845-1846
AUGUSTUS E. MAXWELL	1846-1848
JAMES T. ARCHER	1848-1848
DAVID P. HOGUE	1848-1853
MARIANO D. PAPY	1853-1860
JOHN B. GALBRAITH	1860-1868
JAMES D. WESCOTT, JR.	1868-1868
A. R. MEEK	1868-1870
SHERMAN CONANT	1870-1870
J. B. C. DREW	1870-1872
H. BISSBEE, JR.	1872-1872
J. P. C. EMMONS	1872-1873
WILLIAM A. COCKE	1873-1877
GEORGE P. RANEY	1877-1885
C. M. COOPER	1885-1889
WILLIAM B. LAMAR	1889-1903
JAMES B. WHITFIELD	1903-1904
W. H. ELLIS	1904-1909
PARK TRAMMELL	1909-1913
THOMAS F. WEST	1913-1917
VAN C. SWEARINGEN	1917-1921
RIVERS BUFORD	1921-1925
J. B. JOHNSON	1925-1927
FRED H. DAVIS	1927-1931
CARY D. LANDIS	1931-1936

ASSISTANT ATTORNEYS GENERAL OF FLORIDA

CHARLES O. ANDREWS	1911-1919
GLENN TERRELL	1915-1917
WORTH TRAMMELL	1917-1921
STUART GILLIS	1919-1921
J. B. GAINES	1921-1926
MARVIN C. MCINTOSH	1921-1926
H. E. CARTER	1926-1936
ROY CAMPBELL	1926-1936
MARVIN C. MCINTOSH	1931-1936
ROBERT J. PLEUS	1933-1935
J. V. KEEN	1933-1936
IRA A. HUTCHISON	1933-1935
JOHN L. GRAHAM	1935-1936
JAMES B. WATSON	1935-1936
W. P. ALLEN	1936-

SPECIAL ASSISTANTS TO THE ATTORNEY GENERAL

UNDER CHAPTER 11828, ACTS OF 1927

(Repealed by Chapter 14556, Acts 1920)

Approved June 19, 1929)

A. H. WILLIAMS, Tallahassee, Florida.

J. MCHENRY JONES, Pensacola, Florida.

WALLACE TERVIN, Bradenton, Florida.



PARK TRAMMELL

III.

IN MEMORIAM

The Late Honorable Park Trammell, United States Senator, and Former Attorney General of Florida.

Park Trammell, of Lakeland, Florida, was born in Macon County, Alabama, April 9, 1876, and in his early infancy with his father, John Trammell, and family, moved to Polk County, Florida. He departed this life in the City of Washington, D. C., on Friday, the 8th day of May, 1936, while serving his fourth term as United States Senator from Florida. From Washington his body was escorted by fellow United States Senators and Representatives of Congress to his home City of Lakeland where on Monday afternoon, May 11, 1936, interment was made in Roselawn Cemetery in the presence of a vast company of friends and relatives, and numerous State and National Officials.

He was first married to Miss Virginia Darby, who died in 1922; some two years ago he was again married to Mrs. Beatrice Mesmer; there are no children. Besides his widow he leaves to mourn his loss numerous relatives, among whom are three brothers and four sisters, as follows: Worth W. Trammell, Circuit Judge, Miami, Florida; John D. Trammell, Attorney, Blountstown, Florida; Wilson Trammell, half brother, Attorney, Miami, Florida; Mrs. Walter Jenkins, Marion, South Carolina; Miss Pearl Trammell, Chattahoochee, Florida; Mrs. Peres McDougal, Tallahassee, Florida, and Mrs. Graham Harrison, Quincy, Florida.

His elementary education was obtained in the public schools of Polk County and he later worked his way through college at Cumberland University, Lebanon, Tennessee, from which he returned to Lakeland in 1898 to practice law. He was made City Clerk of Lakeland and was elected Mayor in 1899 and 1901. He was then elected to the House of Representatives of Florida from Polk County for the session of 1903. Next he was elected State Senator from Polk County for the sessions of 1905 and 1907, serving as President of the State Senate in 1905. He was elected Attorney General of Florida for the four year term, beginning in January, 1909, at the end of which term he was elected Governor of Florida for the term beginning in January, 1913, and ending January, 1917. During November of the last year of his term as Governor he was elected United States Senator from Florida, which position he held continuously from 1917 to date of his death.

While serving Florida as Attorney General he represented the State in much important litigation. Throughout his political career he was never defeated for public office. Park Trammell was distinguished for his wide acquaintance throughout the State and his ability to remember the names of numerous friends and political supporters. He was a man of many fine personal qualities, among which was his sincere friendliness on all occasions. In all positions he was loyal to his friends and to the State and Nation which he served, and he leaves an enviable record of public service well performed.

IV.

JUDICIAL DEPARTMENT OF FLORIDA

SUPREME COURT JUSTICES

TALLAHASSEE

DIVISION A

Hon. WILLIAM H. ELLIS, Chief Justice,
Hon. GLENN TERRELL,
Hon. RIVERS BUFORD.

DIVISION B

Hon. JAMES B. WHITFIELD, Presiding Justice,
Hon. ARMSTEAD BROWN,
Hon. FRED H. DAVIS.

Hon. G. T. WHITFIELD, Clerk Supreme Court.
Hon. CARY D. LANDIS, Attorney General.
Hon. T. T. TURNBULL, Attorney for State Railroad Commission.
Hon. FRED H. KENT, Attorney for State Road Department.

JUDGES OF THE CIRCUIT COURT

FIRST CIRCUIT—Hon. A. G. CAMPBELL, Hon. L. L. FABISINSKI.
SECOND CIRCUIT—Hon. EDWARD C. LOVE, Hon. J. B. JOHNSON.
THIRD CIRCUIT—Hon. HAL W. ADAMS, Hon. R. H. ROWE.
FOURTH CIRCUIT—Hon. DEWITT T. GRAY, Hon. BAYARD B. SHIELDS,
Hon. A. D. McNEILL.
DUVAL CIRCUIT—Hon. MILES W. LEWIS.
FIFTH CIRCUIT—Hon. J. C. B. KOONCE, Hon. FRED L. STRINGER.
SIXTH CIRCUIT—Hon. JOHN U. BIRD, Hon. T. FRANK HOBSON, Hon.
JOHN I. VINEY.
SEVENTH CIRCUIT—Hon. HERBERT B. FREDERICK, Hon. GEORGE M.
JACKSON.
EIGHTH CIRCUIT—Hon. A. Z. ADKINS, Hon. H. L. SEBRING.
NINTH CIRCUIT—Hon. ELWYN THOMAS, Hon. M. B. SMITH Hon. FRANK
A. SMITH.
TENTH CIRCUIT—Hon. H. C. PETTEWAY, Hon. W. J. BARKER.
ELEVENTH CIRCUIT—Hon. H. F. ATKINSON, Hon. PAUL D. BARNES, Hon.
W. W. TRAMMELL, Hon. JEFFERSON B. BROWNE.
TWELFTH CIRCUIT—Hon. GEO. W. WHITEHURST, Hon. W. T. HARRISON.
THIRTEENTH CIRCUIT—Hon. L. L. PARKS, Hon. HARRY N. SANDLER.
FOURTEENTH CIRCUIT—Hon. IRA A. HUTCHISON, Hon. E. C. WELCH.
FIFTEENTH CIRCUIT—Hon. C. E. CHILLINGWORTH, Hon.
GEO. W. TEDDER.

JUDGE OF THE COURT OF RECORD

ESCAMBIA COUNTY—Hon. C. MORENO JONES.

JUDGES OF THE CRIMINAL COURT OF RECORD

DADE COUNTY—Hon. BEN C. WILLARD.
DUVAL COUNTY—Hon. WM. J. PORTER.
HILLSBOROUGH COUNTY—Hon. W. H. PETTEWAY.
MONROE COUNTY—Hon. J. VINING HARRIS.
ORANGE COUNTY—Hon. W. M. MURPHY.
PALM BEACH COUNTY—Hon. JOHN L. MOORE.
POLK COUNTY—Hon. ROBERT T. DEWELL.

JUDGE OF THE COURT OF CRIMES

DADE COUNTY—Hon. W. F. BROWN.

JUDGES OF THE CIVIL COURT OF RECORD

DADE COUNTY—Hon. D. J. HEFFERMAN, Hon. A. B. SMALL.
DUVAL COUNTY—Hon. BURTON BARRS.

STATE ATTORNEYS

FIRST CIRCUIT—Hon. E. DIXIE BEGGS, Jr., Pensacola.
SECOND CIRCUIT—Hon. ORION C. PARKER, Jr., Tallahassee.
THIRD CIRCUIT—Hon. A. K. BLACK, Lake City.
FOURTH CIRCUIT—Hon. WILLIAM A. HALLOWES, Jacksonville.
FIFTH CIRCUIT—Hon. J. W. HUNTER, Tavares.
SIXTH CIRCUIT—Hon. CHESTER B. McMULLEN, Clearwater.
SEVENTH CIRCUIT—Hon. MURRAY SAMS, DeLand.
EIGHTH CIRCUIT—Hon. J. C. ADKINS, Gainesville.
NINTH CIRCUIT—Hon. MURRAY W. OVERSTREET, Kissimmee.
TENTH CIRCUIT—Hon. L. GRADY BURTON, Wauchula.
ELEVENTH CIRCUIT—Hon. G. A. WORLEY, Miami.
TWELFTH CIRCUIT—Hon. ROY STUBBS, Fort Myers.
THIRTEENTH CIRCUIT—Hon. J. REX FARRIOR, Tampa.
FOURTEENTH CIRCUIT—Hon. JOHN H. CARTER, Jr., Marianna.
FIFTEENTH CIRCUIT—Hon. PHIL O'CONNELL, West Palm Beach; Hon.
W. J. SALISBURY, West Palm Beach.
TWENTIETH CIRCUIT—Hon. JOHN G. SAWYER, Key West.¹
TWENTY-FIRST CIRCUIT—Hon. ANGUS SUMNER, Fort Pierce.¹

COUNTY SOLICITORS

DADE—Hon. ROBERT R. TAYLOR, Miami.
DUVAL—Hon. L. D. HOWELL, Jacksonville.
ESCAMBIA—Hon. R. H. MERRITT, Pensacola.
HILLSBOROUGH—Hon. LEROY ALLEN, Tampa.
MONROE—Hon. ALLEN B. CLEAR, Jr., Key West.
ORANGE—Hon. O. RAY ELLARS, Orlando.
PALM BEACH—Hon. W. E. ROEBUCK, West Palm Beach.
POLK—Hon. MANUEL M. GLOVER, Bartow.

¹Hold over until 1937.

V.

COUNTIES AND COUNTY SEATS AND COUNTY OFFICERS

County	County Seat	Clerk of Circuit Court	County Judge	Sheriff	Tax Assessors	Tax Collectors	Supervisor of Registration
Alachua	Gainesville	Geo. Evans	B. D. Heirs	J. P. Ramsey	John W. Booth	E. D. Hodges	Mrs. Robt. E. Davis
Baker	Maccleenny	J. A. Burnett	Frank Dowling	S. R. Green	B. Frank Jones	Geo. P. Williams	Wesley Moody
Bay	Panama City	H. A. Pledger	C. S. Russ	John Scott	Duncan G. McQuagge	A. G. Appleberg	J. B. Mashburn
Bradford	Starke	A. J. Thomas	E. K. Perryman	A. O. Andreu	E. W. Hayes	Carl A. Knight	Harold C. Wall
Brevard	Titusville	G. M. Simmons	L. B. Newman	H. T. Williams	Philip H. Wright	H. C. Morgan	W. J. Bailey
Broward	Ft. Lauderdale	E. R. Bennett	B. H. Anderson	Walter R. Clark	L. O. Hansen	W. O. Berryhill	Mrs. Esther L. Gates
Calhoun	Blountstown	J. A. Peacock	J. W. Leath	J. K. Musgrove	C. T. Traylor	J. R. Richards	Lee Bailey
Charlotte	Punta Gorda	E. H. Scott	W. R. Roberts	J. H. Lipscomb	A. C. Jordan	E. Burnette Yaeger	Mrs. L. V. King
Citrus	Inverness	James E. Connor	E. C. May	Charles S. Dean	Frank Ellison	A. S. King	Gordon Cooper
Clay	Green Cove Springs	L. T. Ivey	T. J. Jennings, Jr.	J. P. Hall	Claude Smith	C. L. Saunders	R. R. Dyal
Collier	Everglades	Ed. Scott	S. S. Jolley	L. J. Thorp	D. W. McLeod	C. H. Collier	Ervin H. Berry
Columbia	Lake City	Hugh B. Summers	W. Brantley Brannon	Walter W. Davis	Mrs. E. R. Hale	A. "Buck" McDuffie	Fred L. Johnson
Dade	Miami	E. B. Leatherman	W. F. Blanton	D. C. Coleman	J. N. Lummus, Jr.	Hayes Wood	Carl Holmer, Jr.
DeSoto	Arcadia	Mrs. Mary M. Gwynn	Louis E. Parvis	J. E. Albritton	Miss Kate Carlton	W. M. Noland	Miss Sallie Ivey
Dixie	Cross City	L. L. Currie	L. G. Gunter	F. L. Anderson	J. I. Taylor	J. R. Roberts	D. E. Butler
Duval	Jacksonville	Elliot W. Butts	J. Ollie Edmunds	Rex Sweat	A. H. St. John	Clyde H. Simpson	Emory H. Price
Escambia	Pensacola	Langley Bell	Harvey E. Page	H. E. Gandy	Willey J. McDavid	T. T. Wentworth, Jr.	Ben L. Davis
Flagler	Bunnell	Dale B. Brown	H. A. Eisenbach	E. W. Johnston	D. D. Moody	J. F. Mercer	Miss Ellie Barber
Franklin	Apalachicola	W. P. Dodd	William Sawyer	Chas. L. Robbins	Mrs. Eleanor Floyd	Harry Sawyer	Miss Clyde Brown
Gadsden	Dulacy	F. F. Morgan	E. M. Dyal	W. M. Inman	S. W. Carman	J. M. Rowan	E. O. Hall
Gilchrist	Trenton	H. E. Harlee	M. G. Akins	R. E. Davis	Hugh V. Miller	M. E. Whitty	William Jackson Lord
Glades	Moore Haven	Mrs. D. S. Weeks	L. E. Guess	J. J. Wiggins	I. E. Scott	J. P. Moore	Mrs. Belle Paxton
Gulf	Newahatchka	J. R. Hunter	M. H. Chaffin	Byrd E. Parker	Samuel A. Patrick	Edd. C. Pridgen	Claude G. Rish
Hamilton	Jasper	W. A. Lewis	B. B. Johnson	A. F. Hancock	B. F. Leigh	M. W. Wetherington	Mrs. Henry Carpenter
Hardee	Wauchula	R. Clyde Simmons	Clyde Maddox	C. S. Dishong	Mabry Carlton	Lloyd J. Carlton	Mrs. C. J. Curry
Hendry	LaBelle	Wm. T. Muller	W. T. Maddox	H. L. DeLaney	Dennis Small	Frank A. Dougherty	John L. Hall
Hernando	Brooksville	H. C. Mickler	E. S. McKenzie	Nell F. Law	F. Elmore Saxon	J. T. Daniel	Mrs. Lillie Sewell
Highlands	Sebring	W. Z. Carson	Selwyn C. Ives	Doyle Schumacher	P. G. Gearing	Ruth Bass Hylton	H. T. Piety
Hillsborough	Tampa	Chas. E. Culbreath	Geo. H. Cornelius	J. R. McLeod	W. S. Sparkman	J. M. Burnett	John C. Dekle
Holmes	Bonifay	H. D. Howell	T. L. Belser	Lon F. Brown	W. L. Slay	W. R. Faircloth	Ira Porter Simmons
Indian River	Vero Beach	Douglas Baker	Otis M. Cobb	Wm. Frick	W. R. Duncan	Troy E. Moody	Geo. T. Tiffin
Jackson	Marianna	H. A. Bowles	D. H. Oswald	Walter Watford	Luther Duncan	Leo Sims	Miss Pansy Lee Durd
Jefferson	Monticello	C. H. Sauls	T. B. Bird	A. S. Grant	S. C. Walker	R. J. Taylor	Mrs. Henry Wheeler

Lafayette	Mayo	Sidney C. Edwards	Geo. W. Breare	J. C. Sessions	Thomas J. Sims	F. Mabry Green	M. C. Golden
Lake	Tavares	Geo. J. Dykes	A. S. Herlong, Jr.	B. A. Cassidy	J. Phillip Doss	B. A. Williams	Mrs. M. E. Miller
Lee	Ft. Myers	Mrs. Esther Draughon	David E. Ward	Bob King	John M. Borings	R. Vivian Lee	Mrs. Tuttle Smith
Leon	Tallahassee	Paul V. Lang	W. May Walker	Frank Stoutamire	Wm. A. Bass	W. Kenneth Collins	Miss Hattie L. Coles
Levy	Bristol	Jack L. Meeks	W. F. Anderson	W. B. Whiddon	T. Frank McCall	M. D. Graham	Mrs. P. N. King
Liberty	Madison	W. G. Larkins	Robt. W. Robertson	O. M. Revels	R. H. Deason	Mrs. Mary A. Roberts	Mrs. Eva Baker
Madison	Bradenton	D. F. Burnett, Jr.	Joseph W. Kinsey	Lonnie T. Davis	Angus H. Armstrong	Joe Hill Smith	Arthur E. Ragans
Manatee	Ocala	Iverson Lloyd	S. J. Murphy	C. J. Hutches	James A. Howze	Ralph B. Johnson	Lendell G. Sharer
Marion	Stuart	Carlyle Ausley	L. E. Futch	Gordon Moorehead	J. E. Thomas	L. R. Bracken	Nevin C. Perkins
Martin	Key West	J. R. Pomeroy	E. J. Smith	C. E. Christensen	A. C. Courson	L. C. Kickliter	J. P. Blakeslee
Monroe	Fernandina	Ross C. Sawyer	Raymond R. Lord	Karl O. Thompson	J. Otto Kirchheiner	Frank H. Ladd	John England
Nassau	Crestview	G. C. Burgess	H. V. Burgess	A. J. Higginbotham	S. H. Swearingen	Louis A. Klarer	Miss Annie B. Prewitt
Okaloosa	Okeechobee	Mallory B. Harrow	Wilbur Osburn	John P. Steele	J. H. Vaughan	Cortez L. Campbell	I. S. Boles
Okeechobee	Orange	J. L. Barber	T. W. Conely, Jr.	Claude Simmons	Robert La Martin	Mrs. Beale Alderman	W. B. Hargraves
Orange	Kissimmee	Clarence M. Gay	Victor Hutchins	Frank Karel	Arthur Butt	Clyde M. McKinney	R. T. Tucker
Osceola	West Palm Beach	J. L. Overstreet	J. F. Robinson	Young Tindall	Glen Ray	C. L. Bandy	Clifford Fertice
Palm Beach	Dade City	Geo. O. Butler	Richard P. Robbins	W. Hiram Lawrence	James M. Owens, Jr.	Stetson O. Sproul	J. L. Grier
Pasco	Clearwater	A. J. Burnside	O. L. Dayton, Jr.	O. A. Allen	J. Ed. Bryant	H. G. Batchelor	Mrs. L. H. Wells
Pineellas	Bartow	A. G. McQuagge	Jack F. White	E. C. Cunningham	Chas. A. Wilcox	J. P. Starkey	W. C. Reid
Polk	Palatka	D. H. Sloan, Jr.	Chester M. Wiggins	W. W. Chase	John B. White	Paul M. Henderson	Hugh E. Carlton
Putnam	St. Augustine	W. A. Williams, Jr.	Causey S. Green	R. J. Hancock	E. W. Watkins	Randall Wells	W. M. Williams
St. Johns	St. Lucie	Hiram Faver	Chas. C. Mathis	E. E. Boyce	J. R. Hellier	S. C. Middleton	Lee C. Owens
St. Lucie	Milton	W. R. Lott	Flem. C. Dame	B. A. Brown	E. R. Pierce	Orris Nobles	Mrs. Vida Peterson
Santa Rosa	Sarasota	George H. Leonard	Arrie L. Johnson	Joe T. Allen	Eugene Glover	Earl L. Lewis	R. Glenn Gibson
Sarasota	Sanford	J. R. Peacock	Francis C. Dart	C. B. Pearson	J. Paul Gafnes	Chas. G. Strohmeier	W. T. Dixon
Seminole	Bushnell	O. P. Herndon	R. W. Ware	C. M. Hand	Sanford F. Doudney	John D. Jinkins	W. J. Thigpen
Sumter	Live Oak	Roy Caruthers	J. M. Eaddy	W. T. Coleman	Inman Wheeler	Grady Potter	S. N. Graham, Sr.
Suwannee	Perry	J. L. McMullen	Mack H. Padgett	P. B. Cannon	F. M. Green	M. M. Foxworth	Dutton A. Bonnell
Taylor	Lake Butler	J. R. Jackson	Byron Butler	S. L. Wilson	Abner E. Morgan	Alton C. Hendry	Mrs. W. D. Vereen
Union	DeLand	C. B. Hayes	J. R. Townsend	W. S. Brannen, Jr.	J. DeWitt Knight	Ery G. Sapp	Dallie O. Epperson
Volusia	Crawfordville	I. Walter Hawkins	J. E. Peacock	S. E. Stone	W. Homer Smith	D. P. Smith	O. G. Sage
Wakulla	Defuniak Springs	L. L. Pararo	A. L. Porter	Emmett C. Ferrell	J. H. Ashmore	W. G. Durrance	LeRoy Harvey
Walton	Chipley	Burl Underwood	L. H. Brannon	D. C. Atkinson	D. G. Ray	W. T. Ray	W. T. Ray, ex-officio
Washington		Leon R. Cox	A. D. Carmichael	John P. Harrell	Eddie Yates	R. Carey Fleming	S. D. Harmon

VI.

LETTER OF TRANSMITTAL

STATE OF FLORIDA

ATTORNEY GENERAL'S OFFICE

Tallahassee, Florida, Jan. 1, 1937.

*To His Excellency, Honorable Fred P. Cone,
Governor of Florida:*

SIR:

As required by the constitutional mandate, directing each officer of the Executive Department to make full report of his official acts, of the receipts and expenditures of his office and of the requirements of the same to the Governor at regular periods, or whenever the Governor shall require it, and in compliance with such mandate, as well as in compliance with long established custom in this State by which such reports are made to cover the two calendar years immediately preceding each regular session of the Legislature, I have the honor to submit herewith the Report of this office, covering the period from January 1, 1935, to December 31, 1936.

Respectfully submitted,

CARY D. LANDIS,

Attorney General.

VII.

GENERAL SCOPE OF DUTIES

The Attorney General is required by common law to exercise certain powers and perform a great variety of duties of great public importance in the due and proper administration of our State Government.

The constitutional duties of the Attorney General are prescribed by Section 22 of Article IV of the Constitution as follows:

"The Attorney General shall be the legal adviser of the Governor, and shall perform such other legal duties as may be prescribed by law. He shall be Reporter for the Supreme Court."

There are many statutes pertaining to the duties and powers of the Attorney General and relating to the conduct of the office and the following are quoted as information:

"The Attorney General shall reside at the seat of government, and shall keep his office in a room in the capitol; he shall perform the duties prescribed by the Constitution of this State, and also perform such other duties appropriate to his office, as may from time to time be required of him by law, or by resolution of the Legislature; he shall, on the written requisition of the Governor, Secretary of State, Treasurer, or Comptroller, give his official opinion and legal advice in writing on any matter touching their official duties; he shall appear in and attend to in behalf of the State, all suits or prosecutions, civil or criminal, or in equity, in which the State may be a party, or in any wise interested, in the Supreme Court of the State; he shall appear in and attend to such suits or prosecutions in any other of the courts of the State, or in any courts of any other State, or of the United States; he shall have and perform all powers and duties incident or usual to such office, and he shall make and keep in his office a record of all his official acts and proceedings, containing copies of all his official opinions reports and correspondence, and also keep and preserve in his office all official letters and communications to him, and cause a registry and index thereof to be made and kept, all of which official papers and records shall be subject to the inspection of the Governor of the State, and to the disposition of the Legislature by act or resolution thereof." (Section 125, Comp. Laws, 1927.)

"In case of the disability of the Attorney General to perform any official duty devolving on him, by reason of interest or otherwise, the Governor or Attorney General of this State may appoint another person to perform such duty in his stead." (Section 126, Comp. Laws, 1927.)

"The Attorney General shall prepare marginal abstracts to the several sections and a general alphabetical index to the entire general acts and resolutions of each session of the Legislature as soon as practicable after the adjournment thereof, also an index to the local acts and an index to each of the journals of the two branches of the Legislature. Such acts and resolutions and forms of proceedings thereunder prepared by the Attorney General shall be published under his direction." (Section 127, Comp. Laws, 1927.)

"It shall be the duty of the Attorney General at the convening of each session of the Legislature of this State, or as soon thereafter as possible, to recommend a person experienced in indexing, to supervise and assist the respective clerks of each branch of the Legislature having such work in hand, in making the index for both journals. His compensation shall be fixed by the Legislature as other attaches and he shall have as many days as the Legislature may designate by resolution after the close of each session for completing and presenting his work for approval by the Attorney General, who is authorized to approve such index if found correct, before the payment shall be made for the extra days allowed after the close of the Legislature." (Section 128, Comp. Laws, 1927.)

"It shall be the duty of the Attorney General to make a written report to the Governor five days before the first day of every session of the Legislature, as to the effect and operation of the acts of the last previous session, the decisions of the court thereon, and referring to the previous legislation on the subject, with such suggestions as in his opinion the public interest may demand, which report shall be laid before the Legislature by the Governor with his first message." (Section 129, Comp. Laws, 1927.)

"It shall be a misdemeanor in office for the Attorney General to take or receive any fee for defending any supposed offender in any of the courts." (Section 130, Comp. Laws, 1927.)

"The Attorney General shall exercise a general superintendence and direction over the several State Attorneys of the several circuits as to the manner of discharging their respective duties, and whenever requested by the State Attorneys, shall give them his opinion upon any question of law." (Section 131, Comp. Laws, 1927.)

"The Attorney General shall prescribe the time and manner in which regular quarterly reports shall be made to him by State Attorneys, and it shall be their duty to comply with his instructions in this respect." (Section 132, Comp. Laws, 1927.)

"The Clerk of the Supreme Court is hereby directed to deliver to the Attorney General a copy of each volume or part of volume of the decisions of the Supreme Court of Florida, which may be in the care or custody of said Clerk, and which the Attorney General's office may be without, and take the Attorney General's receipt for the same. The Attorney General shall keep the same in his office at the capitol, and each retiring Attorney General shall take the receipt of his successor for the same and file such receipt in the Treasurer's office: Provided, that this shall not authorize the taking away of any book belonging to the Supreme Court library, kept for the use of said Court." (Section 133, Comp. Laws, 1927.)

"The Attorney General is required to prepare and cause to be printed a sufficient number of copies of fee bills of the various officers of the several counties of this State, and send, or cause to be sent, copies of said fee bills to all county officers in this State. Such officers shall keep posted in a conspicuous place in their office such fee bills, for the information of persons having business with them." (Section 4677, Comp. Laws, 1927.)

In addition to the duties embraced in the foregoing sections of the statutes, other provisions of law make it the duty of the Attorney General to approve the bond of the Comptroller (Sec. 140), of the Shell Fish Commissioner (Sec. 1844), prosecute combinations against Florida meats (Sec. 7076), and investigate and rectify commercial discriminations (Secs. 3940-3943), enjoin violations of the laws regulating commercial feeds stuffs (Sec. 3259), conduct condemnation proceedings on behalf of Board of Commissioners of State Institutions (Sec. 5105) and on behalf of the adjutant General's office for military purposes (Sec. 2054), approve article of incorporation for co-operative marketing associations (Sec. 6473), examine and pass on statements filed by investment companies (Sec. 5997), bring proceedings to forfeit charters of corporations which violate the laws or fail to comply with mandatory requirements of same (Sec. 7946, enforce the anti-trust laws of the State (Sec. 7946), pass upon revocation of licenses of investment companies (Sec. 6001), bring proceedings to annul franchise of corporations not for profit under certain conditions (Sec. 6505), approve title to real estate in which the State is interested (Sec. 2399), pass upon permits of associations doing business under a declaration of trust (Sec. 7093), represent the State in disbarment proceedings in the Supreme Court (Sec. 4176), pass upon and approve regulations of district drainage boards (Sec. 1494), certify Everglades Drainage District bonds (Sec. 1555), bring proceedings against fair associations for annulment of their charters when laws relating to same are violated (Sec. 6524), prepare and publish copies of opinions of the Supreme Court (Secs. 4713, 1983) and act as reporter for the Supreme Court (Sec. 4714), participate in hearings on prosecutions instituted against violators of pure food and drug laws (Sec. 3201), prepare forms for hunting licenses (Sec. 1898), furnish indexes to laws and journals of the Legislature (Sec. 1933), conduct proceedings against insolvent or defaulting insurance companies (Secs. 6202, 6228), conduct all quo warranto proceedings (Secs. 5446, 8162), act as attorney for the Railroad Commission (Secs. 6720, 6732, 6734, 6747, 6751) although this work is negligible because of a provision for the Railroad Commission to employ special counsel under Section 6732; attend all legal business arising in connection with the laws governing the salt water fishing industry (Sec. 1846), prepare bond of contractor for uniform school books (Secs. 860-861), pass upon legality of and give approval to all investments of school district sinking funds in purchases of bonds (Sec. 736), devise and furnish a form of seal for all the courts of the State (Sec. 4881), bring proceedings for annulment of franchises of social clubs under certain conditions (Sec. 6505), control and supervise acts of special assistants to the Attorney General who are not part of the Attorney General's office force, being directly responsible to and appointed by the Governor for special work (Secs. 134-135); give special attention to legal proceedings in connection with the sponge fishing industry (Sec. 1886), conduct suits on bonds of State health officer (Sec. 3170), act as legal advisor and attorney for State Plant Board (Sec. 3833), act as legal advisor for State Road Department (Sec. 1639) which has, however, a special attorney who acts for it in ordinary cases; sue to recover fines for doing business without a license (Sec.

7450); conduct prosecutions against defaulting and delinquent surety companies (Sec. 6296, assist in fixing values of securities deposited with State Treasurer by trust companies under the Trust Act (Sec. 6131), enforcement of vital statistics law (Sec. 3293).

"Chapter 14832, Laws of Florida, Acts of 1931, creating the State Racing Commission designates the Attorney General as the official attorney of such Commission," however Chapter 17276 acts 1935 empowers the commission to employ an attorney at salary not to exceed \$3000 per annum.

ADMINISTRATIVE DUTIES ON BOARDS

The Attorney General is required to perform a great variety of administrative duties as a member of various boards and he is called upon to answer numerous inquiries from State, County and Municipal officers as matters of information and as an aid to bring about uniformity of administration of the law.

The major part of the important business of the State is performed and handled by Boards and Commissions, created by the Constitution and Laws of the State, and this consumes much of the time of the State officials.

The Attorney General is a member of the following Boards and Commissions:

BOARD OF COMMISSIONERS OF STATE INSTITUTIONS

This Board is composed of the Governor and his entire cabinet, which includes the Attorney General (Sec. 17, Art. IV, Constitution).

This Board has the management and control of all the State Institutions, which includes the Florida State Hospital, State Prison Farm, all State convicts, both the industrial School for Boys and the School for Girls and the Home for the Feeble Minded.

The control and management of these institutions places upon this Board innumerable and most important duties.

The Attorney General not only acts as a member of this Board but is also its legal advisor in the various legal and quasi legal questions arising in the management of these large and important institutions.

STATE BOARD OF EDUCATION

This Board is composed of the Governor, Secretary of State, Attorney General, State Treasurer and State Superintendent of Public Instruction. (See Sec. 12, Art. III, Const.)

Upon this Board is imposed the duty of taking charge of and handling all lands of the State held for educational purposes, also to conserve, manage and safely keep the educational funds of the State; and also many other duties in connection with the general educational system of the State.

The Attorney General is the legal advisor of this Board, as well as member thereof.

STATE VOCATIONAL BOARD

By virtue of Chapter 7376, Acts of 1917, (Sec. 842, C. G. L.) the State Board of Education was created the State Vocational Board contemplated by Acts of Congress to co-operate with the Federal Board of Vocational Education in the administration of the Federal Act.

This Board designates the schools at which vocational education in agriculture, the trades and industries shall be taught and also sees to the administering of the provisions of this law.

STATE BOARD OF PARDONS

This Board is composed of the Governor, Secretary of State, Attorney General, Comptroller and Commissioner of Agriculture. (Sec. 12, Art. IV, Const.)

The Constitution gives this Board the power to remit fines and forfeitures, commute punishment, grant pardons in all cases except treason and impeachment.

With an average prison population now of about 3,041 for the year 1935, and 3,315 for the year 1936, it can readily be seen that there are many who feel the urge to apply for clemency of some form.

Two regular meetings of this Board are held each year and during the year 1936 there were 1,200 applications filed with and passed upon by the Board. Life, liberty, suffering and anxiety of the applicants, as well as dependents and society in general, are involved and of necessity careful consideration must be and is given each application, and this consumes a great deal of time of each member of the Board.

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND AND
STATE BOARD OF DRAINAGE COMMISSIONERS

These Boards are composed of the same officials, to-wit: The Governor, Attorney General, Comptroller, State Treasurer and Commissioner of Agriculture. (See Sec. 1385 and 1524, respectively, C. G. L.)

The Trustees of the Internal Improvement Fund hold title to and have the exclusive management and control of all lands belonging to the State which were acquired by Acts of Congress of March 3, 1845, and September 28, 1850, which at this time amounts to approximately 1,154,167.95 acres of swamp and overflow land, 2,985.17 acres of Internal Improvement land proper, and an unknown quantity of land owned by the State under its right of sovereignty.

The Attorney General is Attorney and Counsel for this Board. The legal work by way of foreclosures, drafting of contracts, advice to the Board, etc., is very large in volume, and practically consumes the entire time of one assistant and stenographer.

The law places upon the Board of Drainage Commissioners the duty of establishing a system of canals, drains, levees, dikes and reservoir to

drain and reclaim the swamp and overflowed lands within the drainage districts.

Much time is consumed by the members of these boards in carrying out the duties imposed upon them relative to the important matters involved.

STATE CANVASSING BOARD

This Board is composed of the Secretary of State, Comptroller and Attorney General. (Sec. 348, G. C. L.). The duties of this Board are to canvass the returns of all general elections for State officers.

FLORIDA SECURITIES COMMISSION

This Commission was created by Chapter 14899, Acts of 1913, Laws of Florida, and is composed of the Comptroller, Treasurer and Attorney General.

This Board is invested with the power of administering the act and enforcing its provision. The purpose of the act, is the protection, as far as possible, of the investing public in the purchase of securities. The duties of this Board require frequent meetings and consume considerable time in hearings and study and investigation of Domestic and Foreign Corporations, their assets, plans of operation, etc.

STATE BUDGET COMMISSION

This Commission is composed of the Governor, Secretary of State, Comptroller, Treasurer, Attorney General, Commissioner of Agriculture and State Superintendent of Public Instruction. (Sec. 1366, C. G. L., also Chap. 14654, Acts 1931.)

It is the duty of this Commission to make and assemble reports of their own departments and of all other bureaus, divisions, officers, commissions, institutions and other State agencies and thus prepare a State Budget to be submitted to the Legislature as a basis for the General Appropriation Bill. This work requires much careful thought and consideration and consumes quite considerable time—many departments and institutions desire to be heard in fairness to their reports and proposed recommendations to be made in the budget.

BOARD OF ADMINISTRATION

Chapter 14486, Laws of Florida, Acts of 1929, provided for a depository of sinking funds and delinquent taxes and other moneys for road and bridge indebtedness of the counties and special road and bridge districts of the State or otherwise, and also provided for the issuance of refunding bonds by such counties and special road and bridge districts, and provided for the creation of the Board of Administration and the disbursement of such funds to pay such indebtedness, etc.

Section 12 of this act provided for a Board of Administration, consisting of the Governor as President, the State Comptroller as Secretary

and the State Treasurer as Treasurer. The Attorney General is the legal advisor of this Board and has the handling of all litigation, in which this Board is a party.

The Board of Administration has become one of the most active boards in the State Government, due to the large amount of bonded obligations existing throughout the entire State, and due to various defaults, readjustments and refunding operations.

The Board meets regularly each week and frequently has special meetings. Its business is of such character that it requires the presence of the Attorney General at these meetings, and there has developed a very large amount of litigation in which the Board of Administration is a party. During the two-year period covered by this report, the Attorney General has handled seven hundred thirty-five cases wherein the Board of Administration was a party.

What is commonly known as the Kanner Act, to-wit, Chapter 15891, Laws of Florida, Acts of 1933, places upon the State Board of Administration certain duties relative to the purchase of bonds with the gasoline tax money, and this added greatly to the many duties which had already been placed upon this Board.

In handling the county and various district finances, it frequently appears to be necessary to change investments of certain bonds and to sell and dispose of bonds held for investment at a figure less than par, and it has been suggested in an opinion of the Supreme Court that the proper practice in doing this would be for the Board of Administration to institute suit in Chancery and after giving to interested parties due notice, obtain a decree of the chancellor to the effect that the proposed transfer or change in investment would be proper; and thus it is that the burden of litigation resting upon the Attorney General's Office in connection with the matters pertaining to the Board of Administration, has been greatly increased as these various settlements and adjustments continue to be required to be made for the best interest of the counties and districts.

COMMISSION TO EXAMINE INTO VALIDITY OF STATE WARRANTS

This Commission is composed of three members, the Comptroller, Treasurer and Attorney General. (Sec. 1361, C. G. L.) The duty of this commission is to pass upon the validity and legality of Comptroller's warrants and the Treasurer's certificates issued prior to July 1, 1871.

STATE SINKING FUND COMMISSION

This Commission is composed of five members—Governor, Secretary of State, Attorney General, State Treasurer and State Superintendent of Public Instruction. (Sec. 1379, C. G. L.)

The control of the sinking fund to retire state debt is vested in this commission.

**BOARD OF ASSESSMENT OF RAILROADS, TELEGRAPH AND
TELEPHONE COMPANIES**

This Board is composed of three members—Comptroller, Attorney General and Treasurer. (Sec. 960, C. G. L.)

The Board's duty is to make assessments of the Railroad, Telegraph and Telephone property in the State. To do this, much data and information have to be gathered, hearings held and most careful consideration and thought given to the matter as well as mature judgment exercised in making these assessments.

STATE SCHOOL BOOK COMMISSION

This Commission is composed of the Governor and his entire cabinet, which includes the Attorney General. (Sec. 852, C. G. L.) It is the duty of this Board to select and adopt a uniform series or system of school books for use in the public schools of the State and to enter into contracts for same with the publishers and to enforce the use of such books.

**BOARD FOR FIXING VALUES OF INVESTMENT SECURITIES OF
TRUST COMPANIES**

This Board is composed of the Treasurer, Attorney General and Comptroller, and its title indicates the scope of its duties. (Sec. 6131, C. G. L.)

**BOARD OF COMMISSIONERS OF OKEECHOBEE FLOOD
CONTROL DISTRICT**

The Attorney General is one of the ten members of this Board. The duty of this Board is to establish, construct and maintain canals, levees, dikes, etc., and do the things required by the Act, looking to Flood Control of lands set forth and described in the Act. (Chap. 13711, Acts of 1929.)

DELINQUENT TAX ADJUSTMENT BOARD OF APPEALS

This Board is composed of the Governor, Treasurer and Attorney General. This Board sits as a Board of Appeals in tax appeals provided for in the act creating the Board. (Chap. 14572, Acts of 1929.)

**BOARD FOR SUPERVISION AND REGULATION OF FORMS
TO BE USED FOR ASSUMPTION OF RISK BY
SURETY COMPANIES**

This Board is composed of the Governor, Comptroller, Treasurer and Attorney General, and its title indicates its duties. (Chap. 14489, Acts of 1929.)

STATE BOARD OF CONSERVATION

This Board is composed of the Governor, Secretary of State, the Attorney General, the Comptroller, the State Treasurer, the State Superintendent of Public Instruction, and the Commissioner of Agriculture. (Chap. 16178, Acts 1933). This Board is vested with various duties and powers. See Chapters 17008, 17011, 17016, 17131, 17256, and 17268, Acts 1935.)

STATE HOUSING BOARD

This Board is composed of the Governor of the State, State Treasurer, Attorney General and the Commissioner of Agriculture. (Chap. 16028, Acts 1933.) This Board has many and varied duties as set forth in the act creating the Board.

Regular weekly meetings of the Trustees of the Internal Improvement Fund, State Board of Education, and Commissioners of State Institutions are held once each week on Wednesdays. The State Board of Pardons holds two regular meetings each year—March and September—and numerous other special meetings for the consideration of emergency matters. The Railroad Assessment Board meets annually. The Florida Security Commission meets two or more times per month and the other boards meet at irregular times, monthly, quarterly, annually or biennially, as called by their respective chairmen—the meetings being called and held as the business of the particular board demands.

OFFICIAL OPINIONS

In accordance and compliance with the Constitution and statutes of the State, I have during the period of this report, upon request of the administrative officers of the Executive Department of the State Government, prepared written opinions covering their official duties and powers, and have advised with them generally when called upon.

As required by law copies of all such opinions are on file in this office and many of them are set out in full in this report for convenient use by all such officers and others who may have an interest in them.

This office has been frequently called upon by other State officers, boards and commissions, such as the State Hotel Commission, State Board of Conservation, State Labor Inspector, State Board of Control, State Board of Health, etc., for opinions and advice covering their powers and duties, and while this office is not expressly required to do so, yet I have at all times sought to render such advice and furnish such written opinions, feeling that it would be of assistance in the proper interpretation and application of the statutes covering their powers and duties.

Some of these opinions are set forth in this report.

There is a large volume of work done by this office in the nature of consultation with officers wherein legal advice is sought on various ques-

tions arising in the different departments. Frequently much time is required in making proper investigation in order that proper advice may be given. Very much time of the Attorney General is thus consumed but from the very nature of the work, no record of it can be made and hence is not incorporated herein.

STATE STATUTES TESTED IN THE SUPREME COURT OF FLORIDA AND IN THE FEDERAL COURTS

A large number of State statutes, and especially revenue producing statutes, have been challenged and attacked by appropriate Court proceedings, both in the State and Federal Courts. A complete table of such cases, showing the present status is incorporated in this report as well as all civil cases generally, other than those above mentioned which have had my attention.

Criminal cases reaching the Supreme Court have all been given proper attention, briefs filed and arguments made, the details of and present status is shown in the scheduled report herein. This also applies to all certiorari and habeas corpus proceedings.

REPORTER FOR THE SUPREME COURT

The Constitution requires the Attorney General to act as reporter for the Supreme Court.

During the two-year period covered by this report, the Attorney General has acted as reporter for Volumes 116, 117, 118, 119, 120, 121-122-123 and 124 of the Florida Supreme Court Reports.

All of this work is quite exacting and requires the greatest care for it must be accurate. Supplying omitted citations of cases must be done by research and interlineation of the book and page where same may be found—this occurs where the Court cites a case decided at its current term and is at the time unable to give book and page of same.

An Index Digest of the cases of each volume of the reports must be carefully made before it can be printed.

The Court expects the Attorney General to insert in each report a cross index reference of where each case reported may be found in the Southern Reporter—this requirement has been met at all times but it can readily be seen that to supply these references requires much labor and time.

PUBLISHING ACTS AND RESOLUTIONS OF LEGISLATURE

The Acts and Resolutions of the Legislature of the State for 1935 have been published with marginal abstracts, as required by law, under the direction of this office.

An index to these laws and an index to the journals of each branch of the Legislature were also prepared under the direction of this office,

the index to the journals having been prepared as provided by Section 128 (104) Compiled General Laws, 1927.

EXAMINATION OF ABSTRACTS OF TITLE

Where conveyance of title is made to the State or any of its institutions, the abstracts are submitted to the Attorney General, as well as abstracts covering title to property on which mortgages are deposited with the State Treasurer as securities under the Trust Act. This consumes considerable time as and when these matters are presented.

EXTRADITION MATTERS

It is the fixed policy of the Governor to refer to the Attorney General the applications for extradition of fugitives from justice. These applications have to be examined and approved or rejected, and not infrequently hearings are requested and had and written recommendations made to the Governor, all of which require considerable time of either the Attorney General or one of the Assistants.

OFFICE FURNISHINGS AND LIBRARY

Co-operating in the spirit of economy, I have purchased only such small items of furniture as was absolutely necessary and have bought only such books for the library as were necessary in particular cases actually in the office. The continuing series of law books have, of course, been kept up to date.

ADDITIONAL HELP FOR ATTORNEY GENERAL

During the years 1935 and 1936, the period covered by this Report, the work of this office has increased tremendously as is shown by the report of the great number of cases in the various courts involving state matters. The request for advice, conferences and opinions relating to the collection of State revenue has increased greatly. The office with its present personnel has been much overtaxed. My appropriation being exhausted it was necessary for the State Board of Administration to furnish one assistant and a stenographer to this office in order that we could get out the work of this office in due course.

The tremendous amount of litigation and correspondence incident thereto, as well as the increased amount of opinions requested by the various Boards, State and County Officials, have so increased the work of my Filing Clerk, who is combination File Clerk and Telephone Operator, until it is now necessary for me to have an additional girl to take charge of the telephone switch board and to assist with the filing. Of course, we have no place for extra help to be placed at this time, but when the new offices in the North wing are completed I hope to have ample quarters.

The work in connection with the legal problems involved in the collection of Estate Taxes is rapidly increasing and this is very important as this is now and will continue to be one of the leading sources of State revenue.

In order that the work of the Attorney General may be carried on with proper care and diligence and that the State's interests may be properly cared for I am forced to ask the Legislature for one additional Assistant and a stenographer for him, one combination telephone girl and file clerk, and another Assistant and one stenographer to take the place of the ones now being furnished by the State Board of Administration.

In conclusion, I wish to state that I have endeavored to carry on the work of this department in as economical manner as possible. I especially call attention to the expenditures as shown in this Report. I believe this statement will compare most favorable with the law department of any State or business concern handling a like amount of litigation and legal business.

I cannot close this report without giving due credit to each and every one connected with this department. To do and perform the vast amount of work going through this office, it has been necessary for all to work together as one team and know no definite office hours, all have co-operated in this. Much night work and over hours have been necessary but every one connected with the department has at all times done this willingly and in the proper spirit and they, and each of them, are entitled to their full share of credit for what has been accomplished.

Most respectfully submitted,

CARY D. LANDIS,
Attorney General.

VIII.

APPROPRIATIONS AND EXPENDITURES

Salaries

APPROPRIATIONS

Balance January 1, 1935	\$16,643.71
Appropriation July 1, 1935 to July 1, 1937.....	76,000.00
TOTAL	\$92,643.71

EXPENDITURES

January 1, 1935 to July 1, 1935—

Attorney General	\$ 2,499.96	
Assistant Attorney General	2,124.96	
Assistant Attorney General	1,999.98	
Assistant Attorney General	1,999.98	
Assistant Attorney General	1,950.00	
Assistant Attorney General	1,824.96	
Law Clerk and Bookkeeper	945.00	
Law Clerk and Stenographer	887.46	
Law Clerk and Stenographer	887.46	
Secretary and Stenographer	887.46	
Stenographer	600.00	
TOTAL	\$16,607.22	
Amount reverted July, 1935	36.49	\$16,643.71
BALANCE July 1, 1935		\$76,000.00

July 1, 1935 to January 1, 1937—

Attorney General	\$ 7,499.88	
Assistant Attorney General	6,374.88	
Assistant Attorney General	5,999.94	
Assistant Attorney General	5,999.94	
Assistant Attorney General	5,999.94	
Assistant Attorney General	5,348.49	
Law Clerk-Bookkeeper	2,835.00	
Law Clerk-Stenographer	2,662.38	
Law Clerk-Stenographer	2,662.38	
Secretary and Stenographer	2,662.38	
Stenographer	2,430.00	
Stenographer	2,070.00	
Stenographer	2,040.00	
Stenographer	1,860.00	56,445.21
BALANCE January 1, 1937		\$19,554.79

NECESSARY AND REGULAR EXPENSES

APPROPRIATIONS

Balance January 1, 1935	\$ 3,348.20
Appropriation July 1, 1935 to July 1, 1937	18,000.00
TOTAL	\$21,348.20

EXPENDITURES

January 1, 1935 to July 1, 1935—

These expenses cover Office Equipment, Law Books, Indexing Supreme Court Reports, Telephone, Stationery, Stamps, Telegrams, Traveling Expenses of the Attorney General and Assistants when on business directly affecting this office, Subscriptions to Legal Publications and office supplies	2,954.18
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BALANCE July 1, 1935	\$18,394.02
July 1, 1935 to January 1, 1937—	

All expenses of office as enumerated above, including Indexing and Sidenoting Laws passed at the 1935 Session of the Legislature	\$10,327.86
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	8,066.16
Plus Refund 9/9/36	1.00

BALANCE January 1, 1937	\$ 8,067.10
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IX.

COMPILED STATEMENT OF ALL CASES HANDLED
FROM JANUARY 1, 1935, TO JANUARY 1, 1937.

CIVIL

Number pending January 1, 1935	192
Number Docketed from January 1, 1935 to January 1, 1937.....	943
TOTAL	1,136
Number disposed of	770
Number Pending January 1, 1937	366

CRIMINAL

Number pending January 1, 1935	90
Number Docketed from January 1, 1935 to January 1, 1937.....	298
TOTAL	388
Number disposed of	220
Number Pending January 1, 1937	168

STATEMENT SHOWING COMPARISON OF CASES HANDLED
FOR SIX YEAR PERIOD

	1931-1932	1933-1934	1935-1936
Civil Cases	330	436	1,136
Criminal Cases	335	401	388
TOTALS	665	837	1,524

X.
TABULATED REPORT OF CIVIL CASES
Handled by the Attorney General During the Year 1935-1936.

Style	Action	County	Court	Status	Dkt. Pge.
Acme Feed Stores, Inc. vs. Comptroller	Injunction	Leon	Circuit	Pending ..	1001
Aiken Open Air School vs. Wilcox	Injunction	Pinellas	Circuit	Closed	572
Annenberg et al. vs. Coleman	Habeas Corpus	Dade	Supreme	Closed	852
Appleyard, Inc.	Bankruptcy	Leon	U. S.	Closed	401½
A. C. L. R. R. Co. vs. Amos, Compt.	Injunction	Leon	Circuit	Pending ..	268
A. C. L. R. R. Co. vs. Amos, Compt.	Injunction	Leon	Circuit	Pending ..	352
A. C. L. R. R. Co. vs. Amos, Compt.	Injunction	Leon	Circuit	Pending ..	431
A. C. L. R. R. Co. vs. Lee, Compt.	Injunction	Leon	Circuit	Pending ..	514
A. C. L. R. R. Co. vs. Lee, Compt.	Injunction	Leon	Circuit	Pending ..	665
Atlantic Coast Line R. R. Co. vs. Lee, Compt.	Injunction	Leon	Circuit	Pending ..	2023
Atlantic Coast Line R. R. Co. vs. Lee, Compt.	Injunction	Leon	Circuit	Closed	2389
Atlantic Natl. Bank vs. Carswell	Injunction	Duval	Circuit	Pending ..	2078
Baldwin et al. vs. Richardson et al.	Injunction	Monroe	Circuit	Closed	2281
Baker vs. Lee	Injunction	St. Johns	Circuit	Pending ..	2949
Bankers Trust Co. vs. F. E. C. Ry. Co.	Injunction	Sou. Dist.	U. S.	Closed	650
Barbee vs. David et al.	Foreclosure	Manatee	Circuit	Pending ..	500
Bechtelheimer vs. Lee, Comptroller	Injunction	Leon	Circuit	Closed	2188
Beck vs. Lee, Compt.	Injunction	Leon	Circuit	Closed	923
Belcher et al. vs. Mayo, Com'r Agri. et al.	Injunction	Pinellas	Circuit	Closed	1062
Ben Hur Life Ass'n vs. Board Admr.	Injunction	Sou. Dist.	U. S.	Closed	614
Bierbaum vs. Wilcox	Injunction	Pinellas	Circuit	Closed	834
Biscayne Co. vs. Trustees I. I. F.	Cancellation of Sale	Dade	Circuit	Pending ..	408

Board Pub. Inst. vs. Knott	Injunction	Leon	Circuit	Closed	425
Boley et al. vs. Lee, Compt.	Can. Tax Cert.	Escambia	Circuit	Closed	726
Bond Howell Lbr. Co. vs. Lee, Compt.	Injunction	Leon	Circuit	Pending ..	945
Bonwit Teller & Co. vs. Lee, Compt.	Injunction	Dade	Circuit	Closed	680
Brooksville & Inverness R. vs. Amos	Injunction	Leon	Circuit	Closed	171
Broward Grove and Farm Co. vs. Sholtz, et al.	Mtg. Foreclosure	Broward	Circuit	Pending ..	866
Campbell et vir vs. Halsema, et al.	Mtg. Foreclosure	Duval	Circuit	Pending ..	2421
Campbell vs. McCaskill	Mtg. Foreclosure	Walton	Circuit	Pending ..	2412
Capital City Bank vs. Davis	Injunction	Leon	Circuit	Closed	133
Carlton vs. Sawyer	Bond Forfeiture	Monroe	Circuit	Closed	366
Carlton vs. Simmons	Tax Adjustment	Hardee	Circuit	Closed	666
Carrigan Miller Co. vs. Sholtz et al.	Injunction	Leon	Circuit	Closed	759
Chavers vs. Harrell	Habeas Corpus	Leon	Supreme	Closed	1079
C. H. & N. Ry. vs. Amos, Compt.	Injunction	Leon	Circuit	Closed	172
City of Clearwater, IN RE:	Bankruptcy	Sou. Dist.	U. S. Dist.	Pending ..	2006
City of Dunedin, IN RE:	Bankruptcy	Sou. Dist.	U. S. Dist.	Pending ..	2025
City of Miami et al. vs. Lee, Compt.	Injunction	Dade	Circuit	Closed	965 1/2
City of Panama City vs. Pledger Clk.	Injunction	Bay	Circuit	Pending ..	802
City of Sarasota	Re-adjustment under Bankruptcy Act	Tampa Div.	U. S. Dist.	Pending ..	2280
City of Winter Haven vs. Kennedy	Foreclosure	Polk	Circuit	Pending ..	776
City of Winter Haven vs. L. E. Groves Inc.	Accounting	Polk	Circuit	Closed	536
City of Winter Haven vs. Kennedy et al.	Foreclosure	Polk	Circuit	Closed	776
Clark vs. First Trust Co. et al.	Foreclosure	Sarasota	Circuit	Pending ..	579
Cleaning, Dyeing & Pressing Bd. vs. Bon Ton Cleaners et al.	Injunction	Dade	Circuit	Pending ..	2168-F
Cloverleaf, Inc. vs. Lee, Comptroller	Injunction	Leon	Circuit	Closed	2172
Coen vs. Lee, Compt.	Injunction	Highlands	Circuit	Closed	570
Collins et al. vs. Sholtz et al.	Injunction	Leon	Circuit	Closed	2103
Columbia River Paper Co. et al. vs. Lee, Compt.	Injunction	Leon	Circuit	Pending ..	2273

TABULATED REPORT OF CIVIL CASES HANDLED BY THE ATTORNEY GENERAL—(Continued)

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BIENNIAL REPORT OF THE ATTORNEY GENERAL

Style	Action	County	Court	Status	Dkt. Pge.
Cooper vs. Duncan	Tax Certificate	Indian River	Circuit	Closed	770
Deering et al. vs. Henderson et al.	Cancellation of Sale	Dade	Circuit	Pending	409
Cowl et al. vs. Hanson	Injunction	Hillsborough	Circuit	Closed	843
Creighton vs. Wentworth et al.	Injunction	Leon	Circuit	Closed	865
Daugherty vs. Raulerson et al.	Tax Certificate	Polk	Circuit	Pending	327
Davis et al. vs. Bryan et al.	Foreclosure	Hillsborough	Circuit	Closed	291
Davis et al. vs. Lee, Comptroller	Injunction	Leon	Circuit	Closed	874
Davis, A. D., Inc., et al. vs. Lee, Compt.	Injunction	Leon	Circuit	Pending	1061
Davis vs. Lee, Compt.	Injunction	Leon	Circuit	Pending	935
Dilworth vs. Bridges Cattle Co. et al.	Mtg. Foreclosure	Highlands	Circuit	Closed	2225
Dixie County State Bank vs. Board Co.	Re-establishment				
Com'rs et al.	Destroyed Interest				
Dunlop Tire & Rubber Co. vs. Lee, Compt.	Coupons	Dixie	Circuit	Pending	2390
Dunlop Tire Co. vs. Lee, Compt.	Injunction	Leon	Circuit	Closed	2282
E. & W. Coast Ry. vs. Amos, Compt.	Injunction	Leon	Circuit	Closed	2386½
Elberta Cratê & Box Co. vs. Lee, Compt.	Injunction	Leon	Circuit	Closed	173
Farrington vs. Miami Bank & Trust Co. et al.	Injunction	Leon	Circuit	Pending	2274
Firestone Tire & Rubber Co. et al. vs. Lee, Compt.	Mtg. Foreclosure	Leon	Circuit	Closed	818
First Natl. Bank Miami vs. McCall	Injunction	Leon	Circuit	Closed	2283
First Trust Co. vs. Becker et al.	Injunction	Dade	Circuit	Pending	1089
First Trust Co. vs. Community Chest	Injunction	Dade	Circuit	Closed	826
First Trust Co. vs. Simpson	Probation of Will	Dade	Circuit	Closed	928
Fitchner et al. vs. Sullivan et al.	Injunction	Dade	Circuit	Closed	659
Fla. Adirondack School vs. Lummus	Injunction	Leon	Circuit	Closed	2255
		Dade	Circuit	Closed	603

F. E. C. Ry. Co. vs. Amos, Compt.	Injunction	Leon	Circuit	Closed	288
Florida Collier Coast Hotel Co.	Bankruptcy	Hillsborough	U. S. Dist.	Pending	2290
Fla. Grapefruit Growers vs. Mayo	Injunction	Polk	Circuit	Pending	533
Fla. Pub. Utilities Co. vs. Lee, Compt.	Injunction	Leon	Circuit	Pending	1060
Fla. W. & N. R. Co. vs. Amos, Compt.	Injunction	Leon	Circuit	Closed	174
Foster, Estate of	Escheatment	Hillsborough	Co. Judge	Closed	1055
Fox vs. Sholtz	Re-establishment lost Document	Leon	Circuit	Closed	2359
Fuller vs. G. F. & A. R. R. Co.	Injunction	Middle Dist. Ga.	U. S. Dist.	Pending	850
Gatey vs. Davis	Replevin	Walton	Co. Judge	Closed	2208
G. F. & A. Ry. Co. vs. Lee, Compt.	Injunction	Leon	Circuit	Pending	921
Gillespie vs. Knott	Injunction	Leon	Circuit	Closed	883
Gillespie et al. vs. Knott et al.	Injunction	Bay	Circuit	Closed	573
Gillespie et al. vs. Sholtz et al.	Injunction	Pasco	Circuit	Pending	565
Gleason et al. vs. Goode	Injunction	St. Johns	Circuit	Closed	785
Good et al. vs. Lee, Comptroller	Injunction	St. Johns	Circuit	Pending	2105
Great Atlantic & Pacific Tea Co. vs. Lee, Compt.	Injunction	Leon	Circuit	Closed	2302
Greenleaf & Crosby vs. Coleman	Injunction	Dade	Circuit	Closed	647
Green vs. Murray et al.	Will	Duval	Circuit	Closed	769
Guaranty Trust Co. vs. S. A. L. Ry.	Injunction	Sou. Dist.	U. S.	Pending	682
Haley & Co. vs. McKenney	Injunction	Orange	Circuit	Pending	690
Halsum-Miami Corp. et al. vs. Lee, Compt.	Injunction	Leon	Circuit	Pending	2229
Hampton vs. Matheson	Ex. Trust	Dade	Circuit	Pending	585
Hathaway, deceased	Disp. Estate	Hardee	Co. Judge	Pending	253
Hartford Natl. Bank & Trust Co. vs. Lee, Comptroller	Estate Tax	Volusia	Circuit	Pending	1084
Hart Furniture Co. vs. Lee, Compt.	Injunction	Leon	Circuit	Closed	2291
Hector Supply Co. et al. vs. Lee, Compt.	Injunction	Leon	Circuit	Pending	2275
Henderson vs. Lee, Comptroller	Injunction	Dade	Circuit	Pending	873
Hershey Corp. vs. Becker	Injunction	Dade	Circuit	Closed	741

TABULATED REPORT OF CIVIL CASES HANDLED BY THE ATTORNEY GENERAL—(Continued)

Style	Action	County	Court	Status	Dkt. Pge.
Hidalga Lake Corp. vs. Lancaster et al.	Can. Tax Cert.	Marion	Circuit	Pending	2513
Hilton vs. Fortune	Habeas Corpus	Leon	Supreme	Closed	2372
	Bill to cancel				
Holt vs. Smith et al.	Pub. Records	Hillsborough	Circuit	Pending	2581½
Home Owners Loan Corp. vs. Parfitt et al.	Mtg. Foreclosure	Duval	Circuit	Pending	2405
Jacksonville Gas Co. vs. Amos, Compt.	Injunction	Leon	Circuit	Closed	459
Jackson Grain Co. vs. Lee	Injunction	Leon	Circuit	Pending	1002
Jackson vs. Lee, Comptroller	Injunction	St. Johns	Circuit	Closed	2171
Jeans et al. vs. Coleman	Habeas Corpus	Dade	Supreme	Closed	851
Johnson vs. Lee, Compt.	Estate Tax	Illinois	U. S. Dist.	Closed	928
Johnson vs. Nobles	Injunction	St. Lucie	Circuit	Closed	2201
Kathryn Holding Co. vs. Turner et al.	Injunction	Dade	Circuit	Pending	1000
Kelly vs. Knott et al.	Injunction	Leon	Circuit	Closed	489
Kenan, Jr. et al. vs. Lee, Compt.	Injunction	Leon	Circuit	Closed	2218
Kenan, Jr. et al. vs. Lee, Compt.	Injunction	Leon	Circuit	Closed	2466
Kennedy and Ely, Inc. vs. Knott et al.	Injunction	Dade	Circuit	Closed	2168-a
Kilgore Seed Co. vs. Lee, Comptroller	Injunction	Leon	Circuit	Pending	1030
Kissimmee River Ry. Co. vs. Amos	Injunction	Leon	Circuit	Closed	175
Kitchen vs. Lee, Compt.	Injunction	Leon	Circuit	Pending	2520
Knott vs. Citizens Bank	Accounting	Citrus	Circuit	Pending	266½
Knott vs. Our Home Life Ins. Co.	Receivership	Leon	Circuit	Closed	501
Knott vs. Peoples Ind. Ins. Co.	Receivership	Duval	Circuit	Pending	822
Knott vs. Security Land Ins. Co.	Bank Liquidation	Leon	Circuit	Closed	937½
Knott vs. State Mutual Fire Ins. Co.	Liquidation	Leon	Circuit	Pending	2224
Korp vs. Bussabarger	Mtg. Foreclosure	Polk	Circuit	Closed	2021
Lane Drug Stores, Inc. et al. vs. Lee, Compt.	Injunction	Nor. Dist	U. S.	Closed	942

Lauderdale Harbors, Inc. vs. Cape Cod Realty Co. et al.	Injunction	Broward	Circuit	Pending	414
Lee, Compt. vs. Accurio	Injunction	Hillsborough	Circuit	Pending	2557
Lee, Compt. vs. Berrego	Injunction	Hillsborough	Circuit	Pending	2556
Lee, Compt. vs. Brownie	Injunction	Hillsborough	Circuit	Pending	2553
Lee, Compt. vs. Carranza	Injunction	Hillsborough	Circuit	Pending	2546
Lee, Compt. vs. Bennett	Injunction	Hillsborough	Circuit	Pending	2544
Lee, Compt. vs. Essring	Injunction	Hillsborough	Circuit	Pending	2555
Lee, Compt. vs. Falks Dept. Stores	Injunction	Hillsborough	Circuit	Pending	2536
Lee, Compt. vs. Great A. & P. Tea Co.	Injunction	Hillsborough	Circuit	Pending	2535
Lee, Compt. vs. Haber	Injunction	Hillsborough	Circuit	Pending	2538
Lee, Compt. vs. Leibovitz	Injunction	Hillsborough	Circuit	Pending	2545
Lee, Compt. vs. Mangels	Injunction	Hillsborough	Circuit	Pending	2552
Lee, Compt. vs. Maas Bros.	Injunction	Hillsborough	Circuit	Pending	2537
Lee, Compt. vs. Maas, The Haberdasher	Injunction	Hillsborough	Circuit	Pending	2543
Lee, Compt. vs. Schwob	Injunction	Hillsborough	Circuit	Pending	2551
Lee, Compt. vs. Twenty-Second Street Drug Stores	Injunction	Hillsborough	Circuit	Pending	2554
Lee, Compt. vs. Woolf	Injunction	Hillsborough	Circuit	Pending	2547
Lichthardt vs. Fishiman et al.	Spec. Perf.	Hendry	Circuit	Pending	415
Liggett Drug Co. vs. Lee, Compt.	Injunction	Leon	Circuit	Pending	2303
London Operating Co. vs. Pub. Ind. Co.	Receivership	Leon	Circuit	Pending	505
Lowry vs. Knott	Receivership	Leon	Circuit	Pending	517
McAllister vs. O'Bannon	Injunction	Palm Beach	Circuit	Pending	264
McAllister Realty Co. vs. O'Bannon	Injunction	Palm Beach	Circuit	Pending	264
McCalley vs. Hamler et al.	Foreclosure	Duval	Circuit	Closed	323
McCalley vs. Hamler et al.	Foreclosure	Duval	Circuit	Closed	324
McCormick vs. Wou. Lake Wales Inlet Dist., et al.	Injunction	Dade	U. S. Dist.	Pending	1058
McIntosh Inv. Co. vs. Coult et al.	Ejectment	Orange	Circuit	Pending	894
McNee vs. Wall	Injunction	Nor. Dist.	U. S.	Pending	528

TABULATED REPORT OF CIVIL CASES HANDLED BY THE ATTORNEY GENERAL—(Continued)

Style	Action	County	Court	Status	Dkt. Pge.
Manatee County et al. vs. Knott et al.	Injunction	Leon	Circuit	Closed	2125
Mason Lbr. Co. et al. vs. Lee, Compt.	Injunction	Duval	Circuit	Pending	2442
Metropolis Pub. Co. vs. Lee, Compt.	Injunction	Leon	Circuit	Closed	780
Miami Beach Dev. Co. vs. Hemphill et al.		Leon	Circuit	Closed	817
Miami Military Academy vs. Lummus	Tax Certificate	Dade	Circuit	Closed	491
Milk Control Board vs. Miami Home Milk Control Producers' Assn.	Injunction	Dade	Circuit	Closed	2233
Miller vs. Lee, Compt.	Foreclosure	Dade	Circuit	Pending	793
Miller vs. Roberts et al.		Dade	Circuit	Pending	836
Mills vs. Lee, Compt.	Injunction	Volusia	Circuit	Closed	2232
Mme S. Moghabghab, Inc.	Bankruptcy	Sou. Dist.	U. S. Dist.	Pending	2124
Molwin Inv. Co. vs. Turner	Injunction	Dade	Supreme	Closed	2163
Nelson-Bullock Co. vs. Sou. Real Estate Corp. et al.	Can. Tax Cert.	St. Johns	Circuit	Closed	2212
New East Shenandoah Co. vs. Smith	Mtg. Foreclosure	Dade	Circuit	Pending	2406½
Nunn vs. St. Johns River Conference	Mandamus	Duval	Circuit	Closed	732
Orr vs. Florida Industrial Com.	W. Compensation	Dade	Circuit	Closed	2469
Overstreet, Rec'r vs. Gay	Receivership	Sou. Dist.	U. S.	Closed	938
Palbicke vs. Amos, Compt.	Tax Cert.	Leon	Circuit	Pending	469
Patterson vs. Lee	Injunction	Leon	Circuit	Closed	953
Paxon's, Inc., et al. vs. Lee, Compt.	Injunction	Leon	Circuit	Pending	2257
Peacock vs. Knott, Ins. Com'etal	Receivership	Leon	Circuit	Pending	516
Peak vs. Mayo, Com. Agri.	Injunction	Orange	Circuit	Closed	2465
Pierce-Wall-Furn. Co. vs. Lee, Compt.	Injunction	Leon	Circuit	Pending	2032
Poekel vs. Dowling	Foreclosure	Clay	Circuit	Pending	530
Polk Company vs. Mayo, Com'r Agri.	Injunction	Leon	Circuit	Pending	2143

Pope vs. Bailess et al.	Mtg. Foreclosure	Duval	Circuit	Pending	1008
Pope vs. Blanton	Injunction	Nor. Dist.	U. S.	Pending	679
Powell et al. vs. Lee, Compt.	Injunction	Leon	Circuit	Closed	902
Powell et al. vs. Lee, Compt.	Injunction	Leon	Circuit	Closed	902
Powell et al. vs. Lee, Compt.	Injunction	Leon	Circuit	Closed	902
Powell, Rec'r., vs. Lee, Compt.	Injunction	Leon	Circuit	Closed	1005
Powell, Rec'r., et al. vs. Lee, Compt.	Injunction	Leon	Circuit	Closed	1064
Powell, Rec'r., et al. vs. Lee, Compt.	Injunction	Leon	Circuit	Closed	2005
Powell, Rec'r., et al. vs. Lee, Compt.	Injunction	Leon	Circuit	Closed	2094
Powell, Rec'r., et al. vs. Lee, Compt.	Injunction	Leon	Circuit	Closed	2145
Powell et al. vs. Lee, Compt.	Injunction	Leon	Circuit	Closed	2230
Powell et al. vs. Lee, Compt.	Injunction	Leon	Circuit	Pending	2259
Powell et al. vs. Lee, Compt.	Injunction	Leon	Circuit	Closed	2309
Powell et al. vs. Lee, Compt.	Injunction	Leon	Circuit	Closed	2314
Powell, Jr., et al. vs. Lee, Compt.	Injunction	Leon	Circuit	Closed	2436
Pratt Food Co. et al. vs. Lee, Compt.	Injunction	Leon	Circuit	Pending	2297
Quarrier et al. vs. Warren et al.	Injunction	Escambia	Circuit	Closed	2051
Quincy State Bank et al. vs. Lee, Compt.	Injunction	Gadsden	Circuit	Pending	2066
Ransom vs. Lummis et al.	Injunction	Dade	Circuit	Closed	397
R. C. B. Corp. vs. Lee, Compt.	Tax Cert.	Dade	Circuit	Closed	681
Reeves, IN RE:	Escheatment	Dade	Co. Judge	Pending	2168-G
Reif vs. Simmons et al.	Tax Redemption	Hardee	Circuit	Closed	842
Rembrant Corp. vs. Strohmeyer	Intervention	Sarasota	Circuit	Closed	663
Richardson et al. vs. Baldwin	Injunction	Leon	Supreme	Closed	2253
Ringling vs. Ringling	Divorce	Sarasota	Circuit	Pending	2574
Rorick et al. vs. Board Com'rs Everglades Drainage Dist.	Injunction	Nor. Dist.	U. S.	Pending	385
Ross vs. Lee, Compt.	Recision of Pledge	Volusia	U. S. Dist.	Closed	1083
Ross, Rec'r. vs. Knott	Injunction	Nor. Dist.	U. S. Dist.	Pending	2160
Roth vs. Mayo, Com'r. Agri.	Injunction	Volusia	Circuit	Closed	2144
S. A. L. Ry. Co. vs. Amos, Compt.	Injunction	Leon	Circuit	Closed	176

TABULATED REPORT OF CIVIL CASES HANDLED BY THE ATTORNEY GENERAL—(Continued)

Style	Action	County	Court	Status	Dkt. Pge.
S. A. L. Ry. Co. vs. Amos, Compt.	Injunction	Leon	Circuit	Closed	269
Shaw vs. Hecht	Injunction	Dade	Circuit	Closed	417
Sholtz et al. vs. Harris et al.	Injunction	Dade	Circuit	Pending	2170
Sholtz et al. vs. Tatum Land Co.	Mtg. Foreclosure	Palm Beach	Circuit	Closed	864
Simmons vs. Lee, Compt.	Mandamus	Leon	Supreme	Closed	811
Sirocco Co. vs. Reed et al.	Quiet Title	Dade	Circuit	Pending	462
Six Mile Creek Kennel Club et al. vs. Racing Com.	Certiorari	Leon	Supreme	Closed	829
Smith vs. Knott	Receivership	Leon	Circuit	Closed	507
Southern Kraft Co. vs. Lee, Compt.	Cancellation Tax Cert.	Nor. Dist.	U. S. Ct.	Pending	2449
Spl. Rd. & Bdg. Dist. 14, Dade County vs. State	Bond Validation	Dade	Circuit	Closed	880
Squire vs. Amos, Compt.	Tax Cert.	Leon	Circuit	Pending	466
Srael & Jabaly, Inc. vs. Lee, Compt.	Injunction	Leon	Circuit	Closed	675
Stansell vs. Peoples Ind. Ins. Co. et al.	Receivership	Duval	Circuit	Closed	840
STATE EX REL:					
Adams vs. Lee, Compt.	Quo Warranto	Leon	Supreme	Closed	1087-Q
Albritton vs. Lee, Ccmpt.	Mandamus	Leon	Supreme	Pending	2539
Allen vs. Sholtz	Mandamus	Leon	Circuit	Closed	922
Allen vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2278
Amr. Insurers Assn. vs. Sholtz et al.	Mandamus	Martin	Circuit	Closed	2470
Andrews vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	789
Andrews et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	845
Andrews vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	892
Andrews et al. vs. Gray, Sec'y. State	Mandamus	Leon	Supreme	Closed	2382
Arries vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2216

Arries vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2558
Asbel vs. Sholtz et al.	Mandamus	Leon	Supreme	Closed	616
Ashmore vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2410
Ashmore, Jr., vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2440
Ashmore vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2498
Atlantic Greyhound Lines vs. Mizelle et al.	Mandamus	Leon	Supreme	Pending	2517½
Atlantic Ice & Coal Co. vs. Weems	Mandamus	Leon	Supreme	Closed	2093
Atlantic Peninsular Holding Co.	Mandamus	Leon	Supreme	Closed	848
Barnett Natl. Bank v. Smith	Mandamus	Brevard	Circuit	Closed	606
Barron vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1068
Barron vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2238
Barton vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1025
Barton vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2236
Baynes vs. Sholtz et al.	Mandamus	St. Lucie	Circuit	Pending	691
Beacon Operation Co. vs. Sholtz	Mandamus	Leon	Circuit	Closed	815
Ben Hur Life Ass'n. vs. Union Co.	Mandamus	Union	Circuit	Closed	621
Ben Hur Life Ass'n. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	702
Ben Hur Life Ass'n. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	710
Ben Hur Life Ass'n. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	713
Ben Hur Life Ass'n. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	716
Ben Hur Life Ass'n. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	717
Ben Hur Life Ass'n. vs. Sholtz et al.	Mandamus	Osceola	Circuit	Pending	771
Ben Hur Life Ass'n. vs. Bd. Trustees	Mandamus	Indian River	Circuit	Closed	772
Ben Hur Life Ass'n. vs. Martin Co.	Mandamus	Manatee	Circuit	Closed	777
Ben Hur Life Ass'n. vs. Union Co.	Mandamus	Union	Circuit	Closed	778
Ben Hur Life Ass'n. vs. Charlotte Co.	Mandamus	Charlotte	Circuit	Pending	779
Ben Hur Life Ass'n. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	805
Ben Hur Life Ass'n. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	806
Ben Hur Life Ass'n. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	807
Ben Hur Life Ass'n. vs. Board Bond Trustees et al.	Mandamus	Indian River	Circuit	Closed	2082

TABULATED REPORT OF CIVIL CASES HANDLED BY THE ATTORNEY GENERAL—(Continued)

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BIENNIAL REPORT OF THE ATTORNEY GENERAL

Style	Action	County	Court	Status	Dkt. Pge.
Ben Hur Life Assn. vs. Board Bond Trustees..	Mandamus	Indian River	Circuit	Pending ..	2483
Ben Hur Life Ass'n. vs. Martin County	Mandamus	Martin	Circuit	Closed	925
Ben Hur Life Ass'n. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	820
Ben Hur Life Ass'n. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	919
Bennett vs. Lee	Mandamus	Leon	Supreme	Closed	2192
Blackstone Corp. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	2450
Blackstone Corp. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	2501
Blackstone Corp. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2267
Blackstone vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2271
Blount vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2111
Bond Trustees vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2162
Boone vs. Gray, Sec'y. State	Mandamus	Leon	Supreme	Closed	2408
Bridges vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	798
Bridges vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	956
Brooks vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	658
Brown vs. Sholtz et al.	Mandamus	Leon	Supreme	Closed	839
Brown vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	893
Brown vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1011
Brown vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1019
Brown vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2027
Brown vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	2129
Brown vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2223
Brown vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2326
Brown vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2341
Brown vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2350
Brown vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	2367

Brown vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2368
Brown vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2464
Brown vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2505
Brown vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2530
Burnett vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2222
Burts vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2185
Burts vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2276
Carlton Estate, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	841
Carpenter vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	963
Carpenter vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	964
Carpenter vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2020
Carter vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2150
Carter vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2174
Carter vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2175
Carter vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2189
Carter vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2485
Center vs. Sholtz et al.	Injunction	Leon	Supreme	Closed	582
Central Farmers Trust Co. vs. Monroe Co.	Mandamus	Leon	Circuit	Closed	622
Chalmers vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	787
Chalmers vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	788
Chalmers vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	790
Chavers et al. vs. Lee, Compt.	Mandamus	Leon	Supreme	Closed	1067
Clark Printing Co. v. Lee, Compt.	Mandamus	Leon	Supreme	Closed	709
Clayton vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1069
Commander vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2097
Cook vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1051
Cowling vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	797
Cox et al. vs. Gray, Sec'y. State	Mandamus	Leon	Supreme	Closed	2506
Crane vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	763
Crane vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	801
Crane vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1071

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BIENNIAL REPORT OF THE ATTORNEY GENERAL

Style	Action	County	Court	Status	Dkt. Pge.
Crane vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1086
Crane vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2089
Crane vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2161
Crane vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2176
Crane vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2191
Crane vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2213
Crane vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2239
Crane vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2244
Crane vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2288
Crane vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2330
Crane vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2384
Crane vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2385
Crane vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2488
Crane vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2577
Crosby vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	794
Crosby vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1042
Culbreath vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	1053
Culbreath vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2363
Cunningham et al vs. Davis et al.	Mandamus	Leon	Supreme	Closed	2172 1/2
Dannenburg vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	774
Dannenburg vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2373
Davies vs. Sholtz, et al.	Mandamus	Leon	Circuit	Closed	2209
Davies vs. Sholtz, et al.	Mandamus	Leon	Circuit	Closed	2284
Davies vs. Sholtz, et al.	Mandamus	Leon	Circuit	Closed	2294
Davis vs. Lee, Compt. et al.	Mandamus	Leon	Supreme	Closed	602
Davis vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	743

Davis vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	744
Davis vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	745
Davis vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	809
Davis vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	823
Davis vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	876
Davis vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	879
Davis vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	896
Davis vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	900
Davis vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	961
Davis vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	962
Davis vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	971
Davis vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	980
Davis vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1013
Davis vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1039
Davis vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1041
Davis vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1056
Davis vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2068
Davis vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2316
Davis vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2329
Davis vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2351
Davis vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2409
Davis vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2496
Davis vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2512
Davis vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2515
Defoe vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2081
DeSoto Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	729
Dickson vs. Sholtz, et al.	Mandamus	Leon	Circuit	Closed	1044
Dodson vs. Knott	Mandamus	Leon	Supreme	Closed	2178
Dunwody vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	955
Dunwody vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1098
Dunwody vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2277

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Style	Action	County	Court	Status	Dkt. Pge.
Dunwoody vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2353
Durrance vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2522
Durrance vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2533
Durrance vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2559
Durrance vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2563
Durrance vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2580
Durrance vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2582
East Coast Stages, Inc. vs. Mizelle et al.	Mandamus	Leon	Supreme	Pending	2518
East Coast Lbr. Co. vs. Lee, Compt.	Mandamus	Leon	Circuit	Pending	2566
Ellis vs. Lee, Compt.	Mandamus	Leon	Supreme	Closed	2508
Elston Bank & Trust Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	720
Elston Bank & Trust Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	721
Elston Bank & Trust Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	725
Elston Bank & Trust Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	853
Elston Bank & Trust Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	870
Escambia Inv. Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2437
Farmers & Dealers Bank vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2321
Farmers & Dealers Bank vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2491
Farmers & Dealers Bank vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2562
Fee & Lidden Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	712
Fidelity Life Ass'n. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	761
Fidelity & Casualty Co. vs. Knott	Mandamus	Leon	Supreme	Closed	2177
Fidelity Life Ass'n. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	825
First Savings and Trust Co. vs. Sholtz et al.	Mandamus	Leon	Supreme	Pending	2194
Fisher vs. Carlton, Tax Col'r.	Mandamus	Hardee	Circuit	Pending	2500
Fitchner et al. vs. Sullivan et al.	Mandamus	Leon	Circuit	Closed	2231

Florida Natl. Bank vs. Pinellas Co.	Mandamus	Leon	Supreme	Closed.....	623
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2205
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2206
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2219
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2264
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2265
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2269
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2301
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2313
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2320
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2322
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2328
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2340
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2343
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2344
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2345
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2346
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2348
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2352
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2354
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2355
Fee & Liddon Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2371
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2374
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2376
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2377
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2387
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2392
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2411
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2414
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2418
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2441

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Style	Action	County	Court	Status	Dkt. Pge.
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	2445
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2446
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2447
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	2451
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	2452
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	2454
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	2456
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	2458
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	2459
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	2460
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	2461
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2462
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2463
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	2473
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2478
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2479
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	2484
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2486
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2489
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2490
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2492
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	2497
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	2502
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	2503
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	2524
Florida Securities, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	2525

Foster vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2270
Foster vs. Glades County	Mandamus	Leon	Circuit	Closed	2339
Foster vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2510
Foster vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2581
Fulwood vs. Southeastern Express Co. et al.	Mandamus	Leon	Supreme	Closed	2168-d
Gaines vs. Davis et al.	Mandamus	Sarasota	Circuit	Closed	1033
Gallaher vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2076
Garber vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2289
Garland vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2247
Garland vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2272
Gates vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2305
Gates vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2306
Gates vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2308
Gates vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2332
Gates vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2534
Gautier vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2137
Gautier vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2195
Gautier vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2237
Gautier vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2327
Gautier vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2370
Gautier vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2560
Getzen vs. Sholtz et al.	Mandamus	Leon	Supreme	Closed	566
Gillespie et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	492
Gillespie vs. Ocean Shore Imp. Dist.	Mandamus	Leon	Circuit	Pending	626
Gillespie vs. Citrus County et al.	Mandamus	Leon	Circuit	Pending	627
Gillespie vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	637
Gillespie vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	642
Gillespie vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	644
Gillespie vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	692
Gillespie vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	736
Gillespie vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	750

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BIENNIAL REPORT OF THE ATTORNEY GENERAL

Style	Action	County	Court	Status	Dkt. Pge.
Gillespie vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	766
Gillespie vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	810
Gillespie vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	812
Gillespie vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	812
Gillespie vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	837
Gillespie vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	875
Gillespie vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	882
Gillespie vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	889
Gillespie vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	888
Gillespie et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	901
Gillespie et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	917
Gillespie vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	927
Goodson vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2528
Gorman vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	833
Graham vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2317
Graham vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2318
Graham vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2319
Graham vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2347
Graham vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2381
Graham vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2432
Graham vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2433
Graham vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2434
Graham vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2453
Graham vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2486
Graham vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2487
Graham vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2531

Green vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2054
Green vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2055
Green vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2056
Green vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2057
Hagen vs. Smith	Mandamus	Volusia	Circuit	Closed	1040
Haley & Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2268
Hamilton vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2049
Hamilton vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2064
Hamilton vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2075
Handler vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	638
Hanna vs. Lee, Compt.	Mandamus	Leon	Supreme	Closed	1046½
Hanna vs. Lee, Compt.	Mandamus	Leon	Supreme	Closed	2256
Harries & Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1020
Harries & Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1065
Harries & Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2186
Harries & Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2190
Harries & Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2197
Harries & Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2388
Harrington et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	816
Harrington et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2077
Hemker vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2576
Hernando State Bank vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2579
Highlands Co. vs. Amos, Compt.	Mandamus	Leon	Circuit	Closed	124
Holgate Inv. Co. v. Sholtz et al.	Mandamus	Leon	Circuit	Closed	670
Holgate Inv. Co. v. Sholtz et al.	Mandamus	Leon	Circuit	Pending	673
Hopkins vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	885
Hopkins vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	887
Hopkins vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	912
Hopkins vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	918
Hopkins vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1026
Hopkins vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2072

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Style	Action	County	Court	Status	Dkt. Pge.
Hopkins vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2087
Hopkins vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2088
Hopkins vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2130
Hopkins vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2140
Hopkins vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2156
Hopkins vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2196
Houston vs. Sholtz et al.	Mandamus	Leon	Supreme ...	Pending ..	700
Jackson vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	786
Jackson vs. Gray, Sec'y. State ..	Mandamus	Leon	Supreme ...	Closed.....	2507
Johnston vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	994
Johnston vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	1038
Johnston vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	1088
Johnston vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2071
Johnston vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2102
Johnston vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2220
Johnson vs. Sholtz	Mandamus	Leon	Circuit	Closed.....	2304
Johnson vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2311
Jones vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	1066½
Jones vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2135
Katz vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2356
Keane vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	2112
Keane vs. Sholtz	Mandamus	Leon	Circuit	Closed.....	2116
Keith vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2521
Keith vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	2548
Kenilworth Holding Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	861
Kennedy vs. Knott	Mandamus	Leon	Supreme ...	Closed.....	2180

Knott vs. Ryan	Injunction	Hillsborough	Circuit	Pending	2550
Kokomoor et al vs. Baldwin et al.	Construe Trust	Alachua	Circuit	Pending	2567
Kurz vs. Lee, Compt.	Mandamus	Leon	Supreme	Closed	2024
Landis, Att'y. Gen'l. vs. Adams et al.	Quo Warranto	Dade	Circuit	Closed	936-Q
Landis, Att'y. Gen'l. vs. Albritton	Quo Warranto	Sarasota	Supreme	Closed	1082-Q
Landis, Att'y. Gen'l. vs. Baxter	Quo Warranto	Leon	Supreme	Closed	855
Landis, Att'y. Gen'l. vs. Bennett	Quo Warranto	Suwannee	Circuit	Pending	1-Q
Landis, Att'y. Gen'l. vs. Bird	Quo Warranto	Leon	Supreme	Closed	954-Q
Landis, Att'y. Gen'l. vs. Brown et al.	Quo Warranto	Dade	Circuit	Pending	4-Q
Landis, Att'y. Gen'l. et al. vs. City of Miami Beach	Quo Warranto	Dade	Circuit	Pending	907-Q
Landis, Att'y. Gen'l. vs. City of Sebring	Quo Warranto	Highlands	Circuit	Closed	K-Q
Landis, Att'y. Gen'l. vs. City of Sebring	Quo Warranto	Highlands	Circuit	Closed	3-Q
Landis, Att'y. Gen'l. vs. City of Sou. Miami....	Quo Warranto	Dade	Circuit	Pending	L-Q
Landis, Att'y. Gen'l. vs. City of Sou. Miami....	Quo Warranto	Dade	Circuit	Pending	O-Q
Landis, Att'y. Gen'l. vs. City of Sou. Miami....	Quo Warranto	Dade	Circuit	Pending	Y-Q
Landis, Att'y. Gen'l. vs. City of Sou. Miami....	Quo Warranto	Dade	Circuit	Pending	6-Q
Landis, Att'y. Gen'l. vs. Futch	Quo Warranto	Leon	Circuit	Closed	V-Q
Landis, Att'y. Gen'l. vs. Futch	Quo Warranto	Leon	Supreme	Closed	S-Q
Landis vs. Gildersleeve	Quo Warranto	Suwannee	Circuit	Pending	1-Q
Landis, Att'y. Gen'l. vs. Gurney et al.	Quo Warranto	Orange	Circuit	Closed	M-2
Landis, Att'y. Gen'l. vs. Johnson et al.	Quo Warranto	Hillsborough	Circuit	Closed	X-Q
Landis, Att'y. Gen'l. et al vs. Jones et al.	Quo Warranto	Leon	Supreme	Closed	1072-Q
Landis, Att'y. Gen'l. vs. Kennedy	Quo Warranto	Leon	Supreme	Closed	U-Q
Landis, Att'y. Gen'l. vs. Lake Maintland	Quo Warranto	Orange	Circuit	Closed	930-Q
Landis et al. vs. Lake Placid	Quo Warranto	Leon	Supreme	Closed	Z1-Q
State ex rel. Landis, Att'y. Gen'l. et al. vs. Lewis et al.	Injunction	Pinellas	Circuit	Closed	2001
Landis, Att'y. Gen'l. vs. Lewis	Mandamus	Leon	Supreme	Closed	831
Landis, Att'y. Gen'l. vs. McKinney	Quo Warranto	Leon	Supreme	Closed	T-Q
Landis, Att'y. Gen'l. vs. City of North Miami....	Quo Warranto	Dade	Circuit	Pending	5-Q

TABULATED REPORT OF CIVIL CASES HANDLED BY THE ATTORNEY GENERAL—(Continued)

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BIENNIAL REPORT OF THE ATTORNEY GENERAL

Style	Action	County	Court	Status	Dkt. Pge.
State ex rel. Landis, Att'y. Gen'l. et al. vs. Robt. Hungerford Industrial School	Injunction	Orange	Circuit	Pending ..	821
Landis, Att'y. Gen'l. vs. Roberts & Sons, Funeral Home	Quo Warranto	Marion	Circuit	Pending ..	844
Landis, Att'y. Gen'l. vs. Robinson	Quo Warranto	Wakulla	Circuit	Closed	Q
Landis, Att'y. Gen'l. and Collins vs. Sholtz et al.	Quo Warranto	Leon	Circuit	Closed	2181-Q
Landis, Att'y. Gen'l. and Collins vs. Smith et al.	Quo Warranto	Leon	Circuit	Closed	W-Q
Landis, Att'y. Gen'l. et al. vs. Swanson	Quo Warranto	Leon	Supreme	Closed	856-Q
Landis, Att'y. Gen'l. vs. Tillson	Quo Warranto	Volusia	Circuit	Pending ..	Z-Q
Landis, Att'y. Gen'l. vs. Thompson	Quo Warranto	Dade	Supreme	Closed	N-Q
Landis, Att'y. Gen'l. et al. vs. Town of Lake Placid	Quo Warranto	Highlands	Circuit	Closed	Z1-Q
Lane Drug Stores vs. Carswell	Mandamus	Leon	Supreme	Closed	1078
Lane Drug Stores vs. Simpson	Mandamus	Leon	Supreme	Closed	2091
Lawson vs. Lee, Comptroller	Mandamus	Leon	Supreme	Closed	2107
Massey vs. Lee, Comptroller	Mandamus	Leon	Supreme	Closed	2048
Leedy-Wheeler & Co.	Mandamus	Leon	Circuit	Closed	2019
Leon Loan & Finance Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2241
Leon Loan & Finance Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2242
Leon Loan & Finance Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2246
Leon Loan & Finance Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2295
Leon Loan & Finance Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2300
Leon Loan & Finance Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2378
Leon Loan & Finance Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2407

Leon Loan & Finance Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2419
State ex rel. Leon Loan & Finance Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2420
Leon Loan & Finance Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	2457
Leon Loan & Finance Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	2499
Leon Loan & Finance Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2457
Lesser vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	671
Lesser vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	984
Lesser vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	985
Lesser vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	986
Lesser vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	987
Lesser vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	988
Lesser vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	989
Lesser vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	990
Lesser vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	991
Lesser vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	992
Lesser vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	1047
Lesser vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	1048
Lesser vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	1049
Lesser vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	1050
Lesser vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	1080
Lesser vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2182
Lewis vs. Hanson	Mandamus	Leon	Circuit	Pending ..	2092
Liberty Mutual Ins. Co. vs. Knott et al.	Mandamus	Leon	Supreme ...	Closed.....	2168-b
Lifsey, Jr., vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	2393
Lifsey, Jr., vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	2394
Lifsey, Jr., vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	2395
Lifsey, Jr., vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	2396
Lifsey, Jr., vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	2397
Lifsey, Jr., vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	2398
Lifsey, Jr., vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	2399

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Style	Action	County	Court	Status	Dkt. Pge.
Lifsey, Jr., vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2400
Lifsey, Jr., vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2401
Lifsey, Jr., vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2402
Lifsey, Jr., vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2404
Lifsey, Jr., vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2403
Lincoln Nat. Life Ins. Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2139
Lesser vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	939
Logan vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	886
Lumbermen's Mutual Casualty Co. vs. Knott et al.	Mandamus	Leon	Supreme	Closed	2168-c
Lyman vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	723
Lyman vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	724
Lyman vs. Wall et al.	Mandamus	Leon	Circuit	Closed	751
Lyman vs. Wall et al.	Mandamus	Leon	Circuit	Closed	752
Lyman vs. Wall et al.	Mandamus	Martin	Circuit	Closed	767
Lyman vs. Wall et al.	Mandamus		Circuit	Closed	768
Lyman vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	835
Lyman et al vs. Martin County	Mandamus	Dade	U. S. Dist.	Pending	1037
Lyman et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2136
McEwen vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	772
McEwen vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	814
State ex rel. McEwen vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2142
State ex rel. McMaster vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	932
Manatee Co. Bldg. & Loan Ass'n. vs. Crawford	Mandamus	Leon	Circuit	Closed	119
Martin vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1034

Martin vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1035
Martin vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2040
Masters vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	868
Massey vs. Board Admr.	Mandamus	Leon	Circuit	Closed	773
Mastin & Co. vs. Knott	Mandamus	Leon	Supreme	Closed	2179
Mayer vs. Sholtz	Mandamus	Leon	Circuit	Closed	976
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	906
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	933
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	937
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	957
Meredith et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	965
Meredith et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	999
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	1014
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1015
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1016
Meredith et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1021
Meredith et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1043
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1045
Meredith et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1070
Meredith et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1075
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1076
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1077
Meredith et al. vs. Sholtz et al.	Mandamus	Sarasota	Circuit	Pending	1085
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	1090
Meredith et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	1091
Meredith et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1092
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	1093
Meredith et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2003
Meredith et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2028
W. J. Meredith et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2029
Meredith et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2030

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Style	Action	County	Court	Status	Dkt. Pge.
Meredith et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2031
Meredith et al. vs. Sholtz et al.	Mandamus	Hillsborough	U. S. Dist.	Closed	2033
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2035
Meredith et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2058
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2059
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2060
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2061
Meredith et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2062
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2077½
State ex rel. Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2085
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2101
Meredith et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2108
Meredith et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2115
Meredith et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2128
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2148
Meredith et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2153
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2154
Meredith et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2155
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2202
Meredith et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2214
Meredith et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2215
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2243
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2249
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2250
Meredith et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2262
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2287

Meredith et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2299
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2323
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2324
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2325
Meredith et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2360
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2361
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2364
Meredith et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2365
Meredith et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2416
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2417
Meredith et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2493
Meredith et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2495
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2549
Meredith vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2569
Meredith et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2570
Messer vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2169
Messer vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2263
Messer vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2362
Messer vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2383
Messer vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2455
Messer vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2504
Messer vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2527
Metcalfe vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2000
Metropolitan Life Ins. Co. vs. Beckett et al.	Mandamus	Pinellas	Circuit	Closed	2469½
Metropolitan Life Ins. Co. et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	911
Metropolitan Life Ins. Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2338
Metropolitan Life Ins. Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2571
Mittendorf vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	764
Mittendorf vs. Sholtz	Mandamus	Okaloosa	Supreme	Closed	846
Mittendorf vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	854

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Style	Action	County	Court	Status	Dkt. Pge.
Mittendorf vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	895
Mittendorf vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	897
Mittendorf vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2038
Mittendorf vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2039
Mittendorf vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2083
Mittendorf vs. Broward County et al.	Mandamus	Broward	Circuit	Closed	2098
Mittendorf vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2134
Mittendorf vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2183
Mittendorf vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2240
Mittendorf vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2293
Mittendorf vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2349
Mittendorf vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2475
Mittendorf vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2578
Mohr vs. Lee, Compt.	Mandamus	Leon	Circuit	Closed	677
Monaghan vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2073
Monaghan vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2074
Monaghan vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2095
Monaghan vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2122
Monaghan vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2123
Monaghan vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2203
Monroe vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1032
Monroe County vs. Lee, Compt.	Mandamus	Leon	Supreme	Closed	2565
Morgan vs. Sholtz, et al.	Mandamus	Leon	Circuit	Closed	862
Morgan vs. Sholtz, et al.	Mandamus	Leon	Circuit	Closed	863
Morgan vs. Sholtz, et al.	Mandamus	Leon	Circuit	Closed	931
Morrison vs. Cawthon	Mandamus	Leon	Circuit	Pending	651

Morrison vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	881
Morrison vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	899
Morrison vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	910
Morrison vs. Sholtz	Mandamus	Leon	Circuit	Closed	914
Morrison vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	926
Morrison vs. Sholtz	Mandamus	Leon	Circuit	Closed	951
Morrison vs. State	Mandamus	Leon	Circuit	Pending	960
Morrison vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	966
Morrison vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	967
Morrison vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	968
Morrison vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	973
Morrison vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	993
Morrison vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	998
Morrison vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1012
Morrison vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1024
Morrison vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1094
Morrison vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1096
Morrison vs. Sholtz	Mandamus	Leon	Circuit	Closed	2036
Morrison vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2037
Morrison vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2063
Morrison vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2110
Morrison vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2114
Morrison vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2141
Morrison vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2147
Morrison vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2173
Morrison vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2193
Morrison vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2375
Morrison vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2379
Morrison vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2380
Morrison vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2448
Morrison vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2474

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Style	Action	County	Court	Status	Dkt. Pge.
Morrison vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2511
Morrison vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2516
Morrison vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2532
Morrison vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2561
Morrison vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2564
Natl. Surety Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	698
Nelson vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	645
Nelson vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	656
Nelson vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	719
Nelson vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1003
Nevels vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	819
Newberry vs. Harris et al.	Mandamus	Pinellas	Circuit	Closed	646
Newcomb vs. Browne	Prohibition	Leon	Supreme	Closed	1097
Nielsen vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	974
Nielsen vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2307
Nitor Inv. Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2198
Nitor Inv. Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2199
Nitor Inv. Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2292
Nitor Inv. Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2331
Noel vs. Sholtz	Mandamus	Leon	Circuit	Closed	838
Noel vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2146
Noland vs. Mizell	Mandamus	Leon	Circuit	Closed	2582-2/3
Nunnally vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	633
Ocean Shore Imp. Dist. et al vs. Sholtz et al.	Mandamus	Leon	Supreme	Closed	2226
Palm Beach Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2386
Palm Beach Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2439

Palm Beach Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2575
Parkwood, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	674
Parkwood, Inc. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	832
Patterson vs. Lee, Compt.	Mandamus	Leon	Supreme	Closed	2106
Pelot vs. Sholtz et al.	Mandamus	DeSoto	Circuit	Closed	711
Pelot vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	813
Pelot vs. Sholtz	Mandamus	Leon	Circuit	Closed	813
Pelot vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	830
Pelot vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	869
Pelot vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	891
Pelot vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	952
Pelot vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	958
Pelot vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	970
Pelot vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1004
Pelot vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1009
Pelot vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1022
Pelot vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2026
Pelot vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2067
Pelot vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2126
Pelot vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2132
Pelot vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2133
Pelot vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2158
Pelot vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2227
Pelot vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2261
Pelot vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2415
Pelot vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2435
Peninsular Dist. Corp. vs. Culbreath	Mandamus	Leon	Supreme	Closed	803
Pierce Biese Corp. vs. Sholtz et al.	Mandamus	Leon	Supreme	Closed	605
Pierce Biese Corp. vs. Sholtz et al.	Mandamus	Leon	Supreme	Closed	792
Pilkin et al. vs. Sholtz	Mandamus	Leon	Circuit	Closed	941
Posey vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	859

TABULATED REPORT OF CIVIL CASES HANDLED BY THE ATTORNEY GENERAL—(Continued)

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BIENNIAL REPORT OF THE ATTORNEY GENERAL

Style	Action	County	Court	Status	Dkt. Pge.
Powell vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	949
Preston vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	754
Preston vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	781
Preston vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2070
Preston vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2117
Ranger Inv. Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	857
Revell vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	947
Revell vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	948
Revell vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	977
Revell vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	978
Revell vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1036
Richmond et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2127
Roby vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1010
Rogers vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	827
Rogers vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2138
Root vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	904
Rowe vs. Lee, Compt.	Mandamus	Leon	Supreme	Pending	2542
Scales vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	983
Scofield Pub. Co. vs. Lee, Compt.	Mandamus	Leon	Supreme	Closed	847
Sear vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2369
Security Benefit Ass'n. vs. Sholtz	Mandamus	Leon	Circuit	Closed	708
Security Benefit Ass'n. vs. Jovenal	Mandamus	Leon	Circuit	Closed	746
Security Benefit Ass'n. vs. Sholtz	Mandamus	Leon	Circuit	Closed	808
Securities Benefit Ass'n. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	824
Securities Benefit Ass'n. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2157
Sells vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	796

Sells vs. Sholtz	Mandamus	Leon	Circuit	Closed.....	849
Sells vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	982
Shareholders, Inc. vs. Sholtz	Mandamus	Leon	Circuit	Pending ..	858
Simpson vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	643
Simpson vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	728
Smith vs. Ocean Shore Imp. Dist.	Mandamus	Leon	Circuit	Closed.....	625
Smith vs. Monroe County et al.	Mandamus	Leon	Circuit	Closed.....	628
Smith vs. Pinellas County	Mandamus	Leon	Circuit	Closed.....	629
Smith vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	635
Smith vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	636
Smith vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	737
Smith vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	738
Smith vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	739
Smith vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	740
Smith vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	655
Smith vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	757
Smith vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	2477
Somermeir vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	634
Sou. Life & Health Ins. Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	639
Sovereign Camp W. O. W. vs. Harris et al.	Mandamus	Pinellas	Circuit	Pending ..	632
Sovereign Camp W. O. W. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	706
Sovereign Camp W. O. W. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	714
Sovereign Camp W. O. W. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending ..	995
Sovereign Camp W. O. W. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	1057
Sovereign Camp W. O. W. vs. Knott et al.	Mandamus	Leon	Circuit	Closed.....	2084
Sp'l. Rd. & Bdg. Dist. No. 1 Pinellas County et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	916
State Board of Education vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	972
State Board of Education vs. Sholtz	Mandamus	Leon	Circuit	Closed.....	981
State Board of Education vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	1006
State Board of Education vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed.....	1007

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BIENNIAL REPORT OF THE ATTORNEY GENERAL

Style	Action	County	Court	Status	Dkt. Pge.
State Board of Education vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1017
State Board of Education vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1018
State Board of Education vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1023
State Board of Administration	Mandamus	Leon	Circuit	Pending	2096
State Board of Education vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2099
State Board of Administration vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2100
State Board of Administration	Mandamus	Leon	Circuit	Pending	2149
State Board of Education vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2152
State Board of Education vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2285
State Board of Education vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2286
Stiles vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2528
Stiles et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2221
State ex rel. Stuart Daily News vs. Lee	Mandamus	Leon	Supreme	Closed	898
Suwannee River Bridge vs. Sholtz et al.	Mandamus	Leon	Supreme	Closed	568
State ex rel. Suwannee River Bridge Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	1063
Tanger Inv. Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	749
Tanger Inv. Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	871
Teele vs. Lee, Compt.	Mandamus	Leon	Circuit	Closed	2509
Thompson vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	884
Thompson vs. Davis et al.	Mandamus	Leon	Supreme	Closed	2131
Turner vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2086
Turner vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2204
Turner vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2279
Turner vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2438
State ex rel. Turner vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2444

United Mutual Life Ins. Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2260
United Mutual Life Ins. Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2266
Vallette vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1099
Vallette vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2007
Vallette vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2008
Vallette vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2009
Vallette vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2010
Vallette vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2011
Vallette vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2012
Vallette vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2013
Vallette vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2014
Vallette vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2015
Vallette vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2016
Vallette vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2017
Vallette vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2018
Vallette vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2118
Vallette vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2119
Vallette vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2120
Vallette vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2121
Vermont Inv. Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2296
State ex rel. Vetter vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	969
State ex rel. Vetter vs. Douglass et al.	Injunction	Sou. Dist.	U. S.	Pending	975
State ex rel. Vetter vs. Sholtz et al.	Mandamus	Leon	Supreme	Pending	1027
State ex rel. Vetter vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2090
State ex rel. Vetter vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2184
Wainwright vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1029
Walker vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	782
Wall vs. Sholtz et al.	Mandamus	Leon	Supreme	Closed	747
Ward vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2034
Ward vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2069
Ward vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2151

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BIENNIAL REPORT OF THE ATTORNEY GENERAL

Style	Action	County	Court	Status	Dkt. Pge.
Ward vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2342
Ward vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2472
Ward vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2494
Warwick vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	940
Watkins vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	979
Watkins et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	997
Watkins vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	1052
Watkins et al. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	1095
Western Bank & Trust Co. vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2568
Westheimer vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1028
Whitice vs. Brown	Mandamus	Leon	Supreme	Closed	2471
Williams vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	715
Williams vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	699
Williams vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	795
Williams vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	860
Williams vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	872
Williams vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	929
Williams vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	996
Williams vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	1066
Williams vs. Lee, Compt.	Mandamus	Leon	Supreme	Pending	2002
Williams vs. Lee, Compt.	Mandamus	Leon	Supreme	Pending	2310
Winters vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	686
Winters vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	760
Winters vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	950
Winters vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2065
Winters vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2113

Winters vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2164
Winters vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2245
Winters vs. DeSoto County et al.	Mandamus	Highlands	Circuit	Closed	2258
Winters vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2366
Winters vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2523
Woman's Benefit Ass'n. vs. Sholtz et al.	Mandamus	Leon	Circuit	Closed	2109
Woodward vs. Lee, Compt.	Mandamus	Leon	Circuit	Closed	2187
Woodward vs. Sholtz et al.	Mandamus	Leon	Circuit	Pending	2541
Worley vs. Lee, Compt.	Mandamus	Leon	Supreme	Closed	2210
X-Cel Stores, Inc. vs. Lee, Compt.	Mandamus	Leon	Supreme	Closed	2079
State of Texas vs. State of New York et al.	Declaratory Judgment		U. S. S. Ct.	Pending	2582 1/2
State vs. Fla. Nat'l. Bank	Accounting	Duval	Circuit	Pending	326
State vs. Fla. Sugar Distributors, Inc.	Civil Action	Dade	Circuit	Pending	1073
State vs. Fla. Sugar Distributors, Inc.	Civil Action	Dade	Circuit	Pending	1074
State vs. Friend	Damages	Hillsborough	C. Ct. Rec.	Closed	361
State et al. vs. Graham	Injunction	Sarasota	Circuit	Pending	495
State vs. Lester	Damages	Hillsborough	C. Ct. Rec.	Closed	362
State vs. Minge et al.	Mandamus	Duval	Circuit	Closed	577
Stranahan, Estate of,	Escheatment	Charlotte	Co. Judge	Pending	867
Sumter County, In Re:	Bankruptcy	Sou. Dist.	U. S.	Pending	697
Sumter County vs. Knott et al.	Injunction	Leon	Circuit	Closed	2050
Sumter County et al. vs. Knott, State Treasurer.	Injunction	Leon	Circuit	Closed	2431
Sunny Isles Ocean Beach Co. vs. Gray et al.	Mtg. Foreclosure	Dade	Circuit	Pending	2413
Supreme Forest Woodmen Circle vs. Branch et al.	Injunction	Sou. Dist.	U. S. Dist.	Closed	2022
Tabard Press vs. Fla. Pen. Hotel	Intervention	Sou. Dist.	U. S.	Closed	587
Tabard Press vs. Fla.-Collier Coast Hotels	Intervention	Sou. Dist.	U. S.	Pending	661
Table Sup. Stores, Inc. vs. Lee, Compt.	Injunction	Sou. Dist.	U. S.	Pending	944
Taliaferro et al. vs. Lee, Comptroller et al.	Quiet Title	Manatee	Circuit	Pending	2052
Taliaferro et al. vs. Lee, Comptroller et al.	Quiet Title	Sarasota	Circuit	Pending	2053

TABULATED REPORT OF CIVIL CASES HANDLED BY THE ATTORNEY GENERAL—(Continued)

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BIENNIAL REPORT OF THE ATTORNEY GENERAL

Style	Action	County	Court	Status	Dkt. Pge.
Tampa & Gulf Coast R. vs. Amos, Compt.	Injunction	Leon	Circuit	Closed.....	177
Tampa No. R. R. vs. Amos, Compt.	Injunction	Leon	Circuit	Closed.....	178
Tampa & Gulf Coast R. R. Co. et al. vs. Lee, Compt.	Injunction	Leon	Circuit	Pending ..	2248
Tavares & Gulf R. R. vs. Amos, Compt.	Injunction	Leon	Circuit	Pending ..	179
Taylor County vs. Knott et al.	Injunction	Leon	Circuit	Closed.....	2217
Teston vs. Sholtz et al.	Civil Action	Polk	Circuit	Pending ..	2298
Trammell vs. De Leon Naval Stores	Mandamus	Leon	Circuit	Pending ..	2
Trout vs. Loche, et al.	Quiet Title	Dade	Circuit	Pending ..	727
Trueman Fertl. Co. vs. Mayo, Com'r of Agri.	Injunction	Leon	Circuit	Closed.....	1081
Trustees I. I. Fund vs. Kretex Realty Co., et al.	Mtg. Foreclosure	Glades	Circuit	Closed.....	2168-E
Trustees I. I. Fund vs. Circle Trading Co.	Mtg. Foreclosure	Highlands	Circuit	Closed.....	2207
Ucita Inv. Co. et al. vs. Lee, Compt.	Injunction	Leon	Circuit	Pending ..	2228
Union County vs. Knott	Injunction	Leon	Circuit	Closed.....	2159
U. S. ex rel. Ben Hur Life Ass'n. vs. Monroe Co.	Mandamus	Sou. Dist.	U. S.	Closed.....	684
U. S. ex rel. Ben Hur Life Ass'n. vs. Okeechobee Co.	Mandamus	Sou. Dist.	U. S.	Closed.....	683
U. S. ex rel. Ben Hur Life Ass'n. vs. Bond Trustees	Mandamus	Sou. Dist.	U. S.	Closed.....	685
U. S. ex rel. Ben Hur Life Ass'n. vs. Mar- tin County	Mandamus	Miami Div.	U. S.	Closed.....	908
U. S. ex rel. Municipal Securities Corp. vs. Sholtz et al.	Mandamus	Bay	U. S.	Closed.....	513
U. S. ex rel. Nordham vs. Hillsborough Co., ...	Mandamus	Sou. Dist.	U. S.	Closed.....	2519

U. S. ex rel. Rodgers vs. Rodes et al.	Mandamus	Sou. Dist.	District	Pending ..	2334
U. S. ex rel. Rodgers et al. vs. Rodes et al.	Mandamus	Sou. Dist.	District	Pending ..	2335
U. S. ex rel. Rodgers et al. vs. Rodes et al.	Mandamus	Sou. Dist.	District	Pending ..	2336
U. S. ex rel. Rodgers et al. vs. Rodes et al.	Mandamus	Sou. Dist.	District	Closed	2337
U. S. ex rel. Rorick vs. Knott (2 suits)	Mandamus	Leon	U. S.	Pending ..	437
U. S. ex rel. Western Bank & Trust Co. vs. Sholtz et al.	Mandamus	Sou. Dist.	U. S.	Pending ..	2580-2/3
United Mutual Life Ins. Co. vs. Sholtz et al.	Injunction	Leon	Circuit	Pending ..	903
United Mutual Life Ins. Co. vs. Sholtz et al.	Certiorari	Leon	Supreme	Closed	909
U. S. vs. Certain Parcels of Land, DeSoto Co.	Condemnation	Sou. Dist.	U. S. Dist.	Closed	2391
U. S. vs. Douglass et al.	Condemnation	Sou. Dist.	U. S.	Pending ..	2430
U. S. vs. Eight Parcels of Land, Lee Co. et al.	Condemnation	Sou. Dist.	U. S. Dist.	Pending ..	2165
U. S. vs. Harris et al.	Condemnation	Sou. Dist.	U. S. Dist.	Pending ..	2168
U. S. vs. Havens et al.	Condemnation	Sou. Dist.	U. S.	Pending ..	2514
U. S. vs. Land in Bay and Walton Counties et al.	Condemnation	Nor. Dist.	U. S.	Pending ..	2406
U. S. vs. Land, Glades County	Condemnation	Miami Div.	U. S.	Closed	1003 1/2
U. S. vs. Land, Glades County	Condemnation	Miami Div.	U. S.	Closed	915
U. S. vs. Land, Martin County et al.	Condemnation	Miami Div.	U. S.	Closed	913
U. S. vs. Land, Palm Beach County et al.	Condemnation	Miami Div.	U. S.	Pending ..	914
U. S. vs. Lands, Taylor County	Condemnation	Nor. Dist.	U. C. Dist.	Closed	2042
U. S. vs. Parcels 4	Condemnation	Sou. Dist.	U. S.	Closed	2467
U. S. vs. 4 Parcels of Land	Condemnation	Sou. Dist.	U. S.	Pending ..	248 1/2
U. S. vs. Private Parcels of Land et al.	Condemnation	Nor. Dist.	U. S. Dist.	Closed	2046
U. S. vs. Seven Parcels of Land, Lee County et al.	Condemnation	Sou. Dist.	U. S. Dist.	Pending ..	2166
U. S. vs. Thirteen Parcels of Land, Lee County et al.	Condemnation	Sou. Dist.	U. S. Dist.	Pending ..	2167
U. S. vs. 42 Parcels Land	Condemnation	Sou. Dist.	U. S.	Pending ..	2484 1/4
U. S. vs. 62 Parcels of Land, Lee County	Condemnation	Sou. Dist.	U. S. D. Co.	Pending ..	2235
U. S. vs. 77 Parcels of Land, Lee County	Condemnation	Sou. Dist.	U. S. Dist.	Pending ..	200

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BIENNIAL REPORT OF THE ATTORNEY GENERAL

Style	Action	County	Court		Pge. Dkt.
U. S. vs. 100 Acres of Land, Columbia County et al.	Condemnation	Sou. Dist.	U. S.	Pending ..	2427
U. S. vs. 124 Parcels of Land, Glades and Hendry Counties	Condemnation	Sou. Dist.	U. S. Dist. ..	Pending ..	2234
U. S. vs. 199.67 Acres of Land	Condemnation	Sou. Dist.	U. S.	Closed	2480
U. S. vs. 200.47 Acres of Land	Condemnation	Sou. Dist.	U. S.	Pending ..	2481
U. S. vs. 276.89 Acres of Land, Putnam Co.	Condemnation	Sou. Dist.	U. S.	Pending ..	2426
U. S. vs. 359.97 Acres of Land	Condemnation	Sou. Dist.	U. S.	Pending ..	2517
U. S. vs. 401.91 Acres of Land, Lake County et al.	Condemnation	Sou. Dist.	U. S. Dist. ..	Pending ..	2043
U. S. vs. 400.35 Acres of Land, Baker County et al.	Condemnation	Sou. Dist.	U. S. Dist. ..	Pending ..	2251
U. S. vs. 458.40 Acres of Land, Lake Co. et al.	Condemnation	Sou. Dist.	U. S.	Pending ..	2429½
U. S. vs. 480.82 Acres of Land, Santa Rosa County	Condemnation	Nor. Dist.	District	Pending ..	2357
U. S. vs. 582.52 Acres of Land, Marion Co.	Condemnation	Sou. Dist.	District	Closed	2312
U. S. vs. 595.98 Acres of Land, Columbia County et al.	Condemnation	Sou. Dist.	U. S. Dist. ..	Pending ..	2252
U. S. vs. 639.37 Acres of Land, Walton Co.	Condemnation	Nor. Dist.	U. S.	Pending ..	2428
U. S. vs. 882.91 Acres of Land	Condemnation	Sou. Dist.	U. S.	Pending ..	2482
U. S. vs. 934.73 Acres of Land	Condemnation	Sou. Dist.	U. S.	Pending ..	2540
U. S. vs. 960.21 Acres of Land, Okaloosa County et al.	Condemnation	Nor. Dist.	U. S.	Pending ..	2043½
U. S. vs. 1,197.18 acres of Land in Marion and Putnam Counties et al.	Condemnation	Sou. Dist.	U. S. Dist. ..	Closed	2004
U. S. vs. 1,089.07 Acres of Land, Franklin Co.	Condemnation	Nor. Dist.	U. S.	Pending ..	2425

U. S. vs. 1,195.31 Acres of Land, Columbia County et al.	Condemnation	Sou. Dist.	U. S. Dist. ..	Pending ..	2080
U. S. of America vs. 1,200.08 Acres of Land, Wakulla County	Condemnation	Nor. Dist.	U. S. Dist. ..	Closed.....	1054
U. S. vs. 1,207.63 Acres of Land, Marion County et al.	Condemnation	Sou. Dist.	U. S.	Pending ..	905
U. S. vs. 1,275.46 Acres of Land, Liberty County et al.	Condemnation	Nor. Dist.	U. S.	Pending ..	2423
U. S. vs. 1,470 Acres of Land, Gulf and Bay Counties	Condemnation	Nor. Dist.	U. S. Dist. ..	Closed.....	2104
U. S. vs. 2,590.57 Acres of Land	Condemnation	Sou. Dist.	U. S.	Pending ..	2580 1/2
U. S. vs. 2,663.65 Acres of Land	Condemnation	Sou. Dist.	U. S.	Pending ..	2573
U. S. vs. 2,269.7 Acres of Land, Baker and Columbia Counties	Condemnation	Sou. Dist.	U. S.	Pending ..	890
U. S. vs. 2,794.16 Acres of Land, Liberty County et al.	Condemnation	Nor. Dist.	U. S. Dist. ..	Pending ..	2254
U. S. vs. 3,082.71 Acres of Land, Walton and Okaloosa Counties	Condemnation	Nor. Dist.	District	Pending ..	2358
U. S. vs. 3,623.91 Acres of Land, Liberty and Franklin Counties	Condemnation	Nor. Dist.	U. S.	Pending ..	2424
U. S. vs. 3,938.65 Acres of Land, Okaloosa and Santa Rosa Counties	Condemnation	Nor. Dist.	U. S.	Pending ..	2429
U. S. vs. 4,328.55 Acres of Land, Liberty County et al.	Condemnation	Nor. Dist.	U. S. Dist. ..	Closed.....	2045
U. S. vs. 6,276.25 Acres of Land, Franklin County et al.	Condemnation	Nor. Dist.	U. S.	Pending ..	877
U. S. vs. 6,555.55 Acres of Land	Condemnation	Sou. Dist.	U. S.	Pending ..	2572
U. S. vs. 6,579.71 Acres of Land, Putnam County et al.	Condemnation	Sou. Dist.	U. S.	Pending ..	2422
U. S. vs. 8,852.94 Acres of Land, Liberty County et al.	Condemnation	Nor. Dist.	U. S. Dist. ..	Closed.....	2044

Style	Action	County	Court	Status	Dkt. Pge.
U. S. vs. 12,163.05 Acres of Land, Liberty Co...	Condemnation	Nor. Dist.	U. S. Dist.	Closed	2047
U. S. vs. 34,504.38 Acres of Land, Liberty County et al.	Condemnation	Nor. Dist.	U. S.	Pending	878
U. S. Sugar Corp. vs. Lee, Compt.	Injunction	Leon	Circuit	Closed	1059
VanSchoick vs. Knott et al.	Receivership	Leon	Circuit	Closed	509
VanSchoick vs. Knott et al.	Injunction	Leon	Circuit	Closed	497
Volusia County et al. vs. Knott et al.	Injunction	Leon	Circuit	Closed	959
Volusia County et al. vs. Knott et al.	Injunction	Leon	Circuit	Closed	1046
Wadsworth vs. Brown	Mandamus	Flagler	Circuit	Pending	641
Wallop vs. Knight	Receivership	Hillsborough	Circuit	Closed	2526
Ward vs. Lee, Compt.	Injunction	Nor. Dist.	U. S. Ct.	Pending	2443
Wauchula State Bank vs. Carlton	Injunction	Hardee	Circuit	Pending	735
Weaver vs. Stone	Injunction	Sou. Dist.	U. S.	Closed	934
Williams, W. C., Inc. et al. vs. Lee, Compt.	Injunction	Sou. Dist.	U. S.	Pending	946
Willis vs. Lee, Compt.	Injunction	Leon	Circuit	Closed	2211
Winn-Lovett Groc. Co. vs. Lee, Compt.	Injunction	Nor. Dist.	U. S.	Pending	943
Winn-Lovett Groc. Co. vs. Lee, Compt.	Injunction	Leon	Circuit	Pending	1031
Winn-Lovett Groc. Co. vs. Lee, Compt.	Injunction	Leon	Circuit	Pending	2315
Wolyn vs. A. N. R. R. Co.	Damages	Liberty	Circuit	Closed	70
Woolsey vs. Amos, Compt.	Injunction	Highlands	Circuit	Closed	217
Woman's Benefit Ass'n. vs. Sholtz et al.	Injunction	Leon	Circuit	Pending	920
Wyman, Green & Gilmore vs. Trustees I. I. Fund et al.	Mandamus	Manatee	Circuit	Pending	421

XI.

TABULATED REPORT OF CRIMINAL CASES

Handled by the Attorney General in Which Opinions Were Filed
by the Supreme Court During Years 1935-1936.

CASES DISPOSED OF DURING JANUARY TERM 1935

Name of Offender	Offense	County	Court	Disposition
Allen, Albert	Murder, 2nd Degree	Santa Rosa	Circuit	Affirmed
Carver, J. D.	Habeas Corpus	Dade	Circuit	Reversed
Cawthon, Dexter	Murder, 2nd Degree	Santa Rosa	Circuit	Affirmed
Collier and D'Allessandro	Habeas Corpus	Lee	Circuit	Affirmed
Dabney, Broomer	Murder, 2nd Degree	Santa Rosa	Circuit	Affirmed
Deas, Wallace	Canal Intercourse	Lake	Circuit	Reversed
Deeb, George	Manslaughter	Okaloosa	Circuit	Reversed
Ekman, Carl, et al.	Larceny	Broward	Circuit	Affirmed
Finch and Stone	Habeas Corpus	Putnam	Circuit	Rel. on Bond
Fortner, Parker	Assault to Murder	Pinellas	Circuit	Reversed
Gray, Herbert		Putnam	Circuit	Dismissed
Hall, Henry, et al.	Murder, 2nd Degree	Dade	Circuit	Reversed
Hartman, C. C.	Grand Embezzlement	Escambia	Ct. Recd.	Reversed
Hasty, Monroe	Murder, 1st Degree	Volusia	Circuit	Affirmed
Hurst, Norman, et al.	Arson	Hernando	Circuit	Affirmed
Infinger, Calle, et al.	Grand Larceny	Walton	Circuit	Affirmed
Jarvis, Martin F.	Writ-of-Error Coram Nobis	Union	Circuit	Appn. Denied
Jenkins, Robert	Murder, 1st Degree	Orange	Circuit	Rev. N. Trial
Lemons, C. E.	Habeas	Hillsborough	Circuit	Rev. Fig. Ball

CASES DISPOSED OF DURING JANUARY TERM 1935

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BIENNIAL REPORT OF THE ATTORNEY GENERAL

Name of Offender	Offense	County	Court	Disposition
Mercer, Tip	Robbery	Hendry	Circuit	Dismissed
Mercer, T. O.	Robbery	Highlands	Circuit	Dismissed
McCartie, Roosevelt	Murder, 1st Degree	Dade	Circuit	Reversed
McKenna, James	Grand Larceny	Brevard	Circuit	Reversed
Nash, R. E.	Certiorari	Hamilton	Circuit	Quashed
*Perry, Alex	Unarmed Robbery	Leon	Circuit	Affirmed
Race, R. J.	Habeas Corpus	Dade	Circuit	Reversed
Rolle, Walkene	Murder, 2nd Degree	Dade	Criminal	Affirmed
Skipper, A. C.	Habeas Corpus	Highlands	Circuit	Affirmed
Steigel, Harry	Habeas Corpus	Union	Circuit	Remanded
Teal, J. P.	Manslaughter	Jackson	Circuit	Affirmed
Thomas, George	Assault to Commit Rape	Dade	Criminal	Reversed
Thomas, John Lee	Murder, 2nd Degree	Dade	Circuit	Affirmed
Traylor, H. Y.	Disposing of Property subject to Lien	Madison	Circuit	Affirmed
Walker, J. E.	Perjury	Marion	Circuit	Reversed
Ward, Raleigh	Assault to Murder	Union	Circuit	Dismissed

CASES DISPOSED OF DURING JUNE TERM 1935

Name of Offender	Offense	County	Court	Disposition
Annenberg, Walter	Habeas Corpus	Dade	Circuit	Remanded
Bass, Leon	Arson	Osceola	Circuit	Reversed
Branch, Tarlton	Disbarment	Hillsborough	Circuit	Affirmed

Cassels, Ray	Certiorari	Alachula	Circuit	Dismissed
Clark, Charlie	Assault with intent to Commit Murder	Pinellas	Circuit	Affirmed
Clark, Lee	Murder, 1st Degree	Escambia	Circuit	Affirmed
Clemmons, Lonnie	Habeas Corpus	Polk	Circuit	Petr. Dischg.
Cobb, Sim	Assault with intent to Commit Rape	Pinellas	Circuit	Affirmed
Cummings, Frank	Manslaughter	Orange	Criminal	Affirmed
Del Pino, Juan	Murder, 1st Degree	Monroe	Circuit	Affirmed
Edwards, Mack, et al.	Breaking and Entering	Walton	Circuit	Affirmed
English, John	Crime Against Nature	Dade	Criminal	Affirmed
Fekany, Louis	Desertion	Orange	Criminal	Reversed
Franklin, B. M.	Manslaughter	Jackson	Circuit	Reversed
Frank, Peter	Murder, 1st Degree	Hillsborough	Circuit	Rev. N. Trial
Frank, Peter	Application for Bail	Hillsborough	Circuit	Rel. on Bond
Green, Ben	Robbery	Dade	Criminal	Affirmed
Haddock, Robt. B.	Murder, 2nd Degree	Polk	Circuit	Reversed
Hall, Burl and Floyd		Walton	Circuit	Dismissed
Harrell, John P.	Habeas Corpus	Leon	Supreme	Petr. Rmd.
Harrison, Ralph E.	Habeas Corpus	Taylor	Circuit	Petr. Rmd.
Hartman, C. C.	Grand Embezzlement	Escambia	Circuit	Reversed
Hasty, Monroe	Murder, 1st Degree	Volusia	Circuit	Reh'g Denied
Hawkins, L. C.	Manslaughter	Pinellas	Circuit	Reversed
House, Albert A.	Habeas Corpus	Hillsborough	Circuit	Del. Sheriff Proper Sent.
Howell, Cecil	Carnal Intercourse	Duval	Criminal	Rev. N. Trial
Huston, James	Habeas Corpus	Broward	Circuit	Petr. Dischg.
Jackson, Olin		Walton	Circuit	Dismissed
Jeans, Paul G.	Habeas Corpus	Dade	Circuit	Remanded
Jones, Michael	Application for Bail	Hillsborough	Circuit	Res. on Bail
Jones, Michael	Armed Robbery	Hillsborough	Circuit	Affirmed

CASES DISPOSED OF DURING JUNE TERM 1935

Name of Offender	Offense	County	Court	Disposition
Jones, Percy	Habeas Corpus	Lee	Circuit	Reversed for Appro. Proc.
Keith, Dewey	Kidnapping	Holmes	Circuit	Affirmed
Keith, Millard, et al.	Kidnapping	Holmes	Circuit	Reversed
Kimes, LeRoy	Breaking and Entering	Dixie	Circuit	Affirmed
McCall, Jim O.	Murder, 3rd Degree	Okaloosa	Circuit	Reversed
Mahoney, D. J.	Habeas Corpus	Dade	Circuit	Affirmed
Mathis, Dewey	Robbery Armed	Columbia	Circuit	Reversed
Mears, Dave	Breaking and Entering	Broward	Circuit	Reversed
Moir, Ray	Habeas Corpus	Escambia	Ct. Rec.	Pet. Denied
Messer, Cecil	Unarmed Robbery	Palm Beach	Criminal	Rev. N. Trial
Montgomery, John	Habeas Corpus	Hendry	Circuit	Dismissed
Montgomery, Willie	Habeas Corpus	Hendry	Circuit	Dismissed
Nowling, Millard, et al.		Walton	Circuit	Dismissed
Nowling, Millard, et al.		Walton	Circuit	Dismissed
Padgett, E. H.	Habeas Corpus	Dade	Circuit	Affirmed
Padgett, L. D.	Murder, 1st Degree	Santa Rosa	Circuit	Affirmed
Palmer, Richard	Fraudulent Registration	Hillsborough	Criminal	Affirmed
Pass, E. G.	Rape	Dade	Circuit	Reversed
Phillips, Forest	Murder, 2nd Degree	Walton	Circuit	Affirmed
Popps, J. S.	Manslaughter	Broward	Circuit	Affirmed
Register, Gordon	Murder, 2nd Degree	Polk	Circuit	Reversed
Richardson, Vera	Habeas Corpus	Dade	Circuit	Petr. Rmd.
Ricks, Paul	Habeas Corpus	Manatee	Circuit	Ptr. Dischgd.
Rivers, Rodie	Perjury	Osceola	Circuit	Reversed
Robinson, Ben	Certiorari	Highlands	Circuit	Jdgmt. Q'hed.

Rowe, Allen	Murder, 1st Degree	Manatee.....	Circuit.....	Rev. N. Trial
Saxon, D. F.	Habeas Corpus	Dade.....	Circuit.....	Affirmed
Scoggins, Geo. W. ....	.....	Dade.....	Circuit.....	Rmd.-ReS'ts.
Skipper, A. G.	Certior.ri	Highlands.....	U. S. Sup.....	Denied
Slack, Tom .....	.....	Santa Rosa.....	Circuit.....	Dismissed
Sparkman, Clyde	Grand Larceny	Hillsborough.....	Criminal.....	Dismissed
Strickland, Martin .....	.....	Okeechobee.....	Circuit.....	Dismissed
Walston, G. A.	Habeas Corpus	Dade.....	Circuit.....	Affirmed
Waterman, Louis	Murder, 1st Degree	Pinellas.....	Circuit.....	Affirmed
Watkins, Robert	Larceny	Leon.....	Circuit.....	Reversed
Wells, Robert J.	Habeas Corpus	Alachula.....	Circuit.....	Remanded
Welsh, Lemuel	Carnal Intercourse	Dade.....	Criminal.....	Reversed
Wentworth, J. H.	Habeas Corpus	Dade.....	Circuit.....	Petr. Dichgd.
Wernokoff, Leo	Robbery Armed	Lake.....	Circuit.....	Reversed
White, Ruby	Robbery Armed	Hillsborough.....	Criminal.....	Affirmed
Williams, Harry	Murder, 1st Degree	Dade.....	Circuit.....	Dismissed
Wilson, Charles (2 cases)	Bribery	Hillsborough.....	Criminal.....	Affirmed

CASES DISPOSED OF DURING THE JANUARY TERM 1936

Name of Offender	Offense	County	Court	Disposition
Aldrich, Arthur	Robbery Armed	Broward.....	Circuit.....	Reversed
Aulday, Harry	Larceny	Sarasota.....	Circuit.....	Reversed
Benefield, Frank	Breaking and Entering	Washington.....	Circuit.....	Affirmed
Bethel, Thomas	Breaking and Entering	Dade.....	Criminal.....	Reversed
Blumer, Louis	Habeas Corpus	Dade.....	Ct. Crimes.....	Pet'r. Dschgd.
Brown, A. C.	Habeas Corpus	Polk.....	Criminal.....	Denied
Canady, ———	Murder 1st Degree	Jackson.....	Circuit.....	Reversed
Chambers, Isiah, et al.	Writ of Error Coram Nobis	Broward.....	Circuit.....	Rev. R'm'd.

CASES DISPOSED OF DURING THE JANUARY TERM 1936

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BIENNIAL REPORT OF THE ATTORNEY GENERAL

Name of Offender	Offense	County	Court	Disposition
Collier, D'Allesandro	Certiorari		U. S. Sup.	Denied
Croft, Walter	Larceny	Pasco	Circuit	Reversed
Currie, Eddie	Carnal Intercourse	LaFayette	Circuit	Affirmed
Dixon, Paul	Habeas Corpus	Broward	Circuit	Pet'r. R'm'd.
Findley, W. E.	Breaking and Entering	Duval	Criminal	Rev. R'm'd.
Florio, Anthony	Habeas Corpus	Dade	Circuit	Reversed
Fossey, et al. (2 cases)	Habeas Corpus	Dade	Circuit	Pet'r. Dschgd.
Graives, Melvin O.	Manslaughter	Volusia	Circuit	Affirmed
Graives, Melvin O.	Habeas Corpus	Volusia	Circuit	Pet'r. R'm'd.
Halfrich, Frank	Murder 1st Degree	Broward	Circuit	Affirmed
Hardy, Hasty		Santa Rosa	Circuit	Dismissed
Harrell, Austin	Larceny	Taylor	Circuit	Affirmed
Harrell, Frank	Habeas Corpus	Holmes	Circuit	Pet'r. Dschgd.
Holland, Luke	Manslaughter	Calhoun	Circuit	Rev. N. Trial
House, Albert	Application Supersedeas	Hillsborough	Criminal	Denied
Hulst, Mahlon	Manslaughter	Dade	Criminal	Reversed
Jones, Michael C.	Certiorari	Union	U. S. Sup.	Denied
Kearson, A. B., et al.	Grand Larceny	Madison	Circuit	Affirmed
Langford, Homer	Lewd, etc., Behavior	Walton	Circuit	Affirmed
Leathers, W. O.	Habeas Corpus	Dade	Criminal	Pet'r. R'm'd.
Mayers, H. R.	Embezzlement	Pinellas	Circuit	Reversed
Mitchell, Harry	Habeas Corpus	Santa Rosa	Circuit	Dismissed
Moore, Lacy	Manslaughter	Union	Circuit	Affirmed
McCormick, Carl	Rape	Duval	Circuit	Dismissed
Osborne and McKinstry	Habeas Corpus	Hillsborough	Circuit	Affirmed
Padgett, Eliza	Larceny	Taylor	Circuit	Affirmed

Parker, Earl	Injury to Animals	Duval	Criminal	Affirmed
Peacock, Robert	Manslaughter	Jackson	Circuit	Affirmed
Plaisance, Callen	Habeas Corpus	Santa Rosa	Circuit	Dismissed
Platt, Parke	Larceny	Glades	Circuit	Affirmed
Pottinger, Victor	Larceny	Dade	Criminal	Reversed
Prickett, Samuel A.	Certiorari	Broward	Circuit	Dismissed
Pringle, W. M.	Injury to Animals	Duval	Criminal	Affirmed
Pringle, W. M.	Grand Larceny	Duval	Criminal	Affirmed
Rufkin, Bunt	Habeas Corpus	Duval	Circuit	Dismissed
Samuels, LeRoy	Breaking and Entering	Escambia	Circuit	Affirmed
Scott, Kenny Lee		Walton	Circuit	Dismissed
Sidebottom, William	Habeas Corpus	Dade	Circuit	Affirmed
Skipper, C. A.	Habeas Corpus	Highlands	Circuit	Pet'r. R'm'd.
Stansel, Joe	Manslaughter	Taylor	Circuit	Affirmed
Stewart, Anna	Habeas Corpus	Dade	Circuit	Pet'r. Dschgd.
Strickland, Coy	Murder 2nd Degree	Walton	Circuit	Affirmed
Taylor, Harry T.	Withholding Support	Dade	Circuit	Reversed
Vogel, Bonnie	Manslaughter	Dade	Criminal	Reversed
Walks, Vincent	Breaking and Entering	Dade	Criminal	Affirmed
Ward, W. D., et al.	Larceny	Lake	Circuit	Affirmed
Warner, Rosa	Murder 2nd Degree	Duval	Circuit	Dismissed
Waterman, Lewis	Habeas Corpus	Pinellas	Circuit	Pet'r. R'm'd.

CASES DISPOSED OF DURING JUNE TERM 1936

Name of Offender	Offense	County	Court	Disposition
Bannerman, W. H.	Manslaughter	Madison	Circuit	Affirmed
Barber, Herbert	Habeas Corpus	Duval	Circuit	Affirmed
Barber, Herbert	Murder 2nd Degree	Duval	Circuit	Affirmed

CASES DISPOSED OF DURING JUNE TERM 1936

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BIENNIAL REPORT OF THE ATTORNEY GENERAL

Name of Offender	Offense	County	Court	Disposition
Brown, Sim	Arson	Walton	Circuit	Reversed
Brown, Fred R.	Habeas Corpus	Brevard	Circuit	Remanded
Campbell, Arthur	Unarmed Robbery	Escambia	Ct. Rec.	Dismissed
Campbell, Arthur	Unarmed Robbery	Escambia	Ct. Rec.	Dismissed
Casey, Clarence D.	Murder 1st Degree	Dade	Circuit	Affirmed
Carter, Eddie	Habeas Corpus	Alachua	Circuit	Affirmed
Davis, S. E.	Habeas Corpus	St. Johns	Circuit	Denied
Dean, Joe	Cause of action not shown	Pinellas	Circuit	Dismissed
Dooley, A. B., et al.	Habeas Corpus	Duval	Circuit	Discharged
Dupree, Frank	Robbery	Duval	Criminal	Affirmed
Forehand, Pleas	Murder 1st Degree	Bay	Circuit	Reversed
Hamilton, James	Habeas Corpus	Collier	Circuit	Remanded
Handley, Earnest	Manslaughter	Madison	Circuit	Affirmed
Handley, Ernest	Manslaughter	Madison	Circuit	Rev. R'm'd.
Hopson, Allen J.	Manslaughter	Polk	Criminal	Reversed
House, Albert R. (3 cases)	Poss. Burglars Tools	Hillsborough	Criminal	Dismissed
Jones, Michael C.	Certiorari	Hillsborough	U. S. Sup.	Dismissed
Jones, Roy	Habeas Corpus	Pinellas	Circuit	Discharged
King, Griffin, et al.	Killing Steer	Walton	Circuit	Affirmed
Kite, Marvin	Rape	Duval	Circuit	Affirmed
Lawson, D. B.	Rec. Stolen Property	Duval	Criminal	Reversed
McCall, Geo.	Embezzlement	Dade	Criminal	Dismissed
McTear, M.	Manslaughter	Duval	Criminal	Rev. R'm'd.
Martin, John, Jr.	Habeas Corpus	Dade	Criminal	Discharged
Nelson, John D.	Embezzlement	Duval	Criminal	Dismissed
Newboid, William	Murder 1st Degree	Dade	Circuit	Reversed

Nipper, J. H., et al.	Rape	St. Lucie	Circuit	Reversed
Padgett, Dan, et al.	Cutting Fence	Osceola	Circuit	Reversed
Patrick, I. J., Sr.	Manslaughter	Charlotte	Circuit	Affirmed
Perkins, Afaia	Poss. Stolen Property	Dade	Criminal	Reversed
Pridgen, O. G.	Habeas Corpus	Duval	Criminal	Affirmed
Pridgen, O. G.	Habeas Corpus	Duval	Criminal	Remanded
Powell, Janie	Habeas Corpus	Volusia	Circuit	Remanded
Reddick, Jim	Killing Steer	Walton	Circuit	Affirmed
Royal, Lester	Forgery	Palm Beach	Criminal	Affirmed
Scroggins, George W.	Murder 1st Degree	Dade	Circuit	Affirmed
Skipper, C. A.	Coram Nobis	Highlands	Circuit	Denied
Sweeting, Sumner	Habeas Corpus	Dade	Criminal	Discharged
Stalvey, W. W.	Habeas Corpus	Duval	Criminal	Discharged
Scott, F. E., et al.	Habeas Corpus	Martin	Circuit	Reversed
Thompson, Cleve	Breaking and Entering	Dade	Criminal	Affirmed
Thomas, Louis	Carnal Intercourse	Columbia	Circuit	Affirmed
Vereen, Moses	Armed Robbery	Palm Beach	Criminal	Affirmed
Vogel, Bonnie	Habeas Corpus	Dade	Criminal	Denied
Whittice, J. W.	Rape	St. Lucie	Circuit	Reversed
Williams, Richard	Murder 1st Degree	Pinellas	Circuit	Dismissed
Wilson, James	Murder 1st Degree	Duval	Criminal	Pet'r. R'm'd.
Waldrop, Dick	Habeas Corpus	Charlotte	Circuit	Remanded
White, Chester	Murder 1st Degree	Union	Circuit	Affirmed
Williams, Harry	Murder 1st Degree	Dade	Circuit	Reversed

XII.

REPORTS OF STATE ATTORNEYS FOR YEARS 1935-6 UNDER SECTION 132 C. G. L.

FIRST JUDICIAL CIRCUIT

Escambia County
Okaloosa County
Santa Rosa County
Walton County

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
ESCAMBIA:			
Homicide:			
First Degree	5	1	....
Second Degree	2	....	....
Manslaughter	1	....	....
Rape	1	1	....
Election Law Violations .....	....	1	....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	3	....
Bond Validation Proceedings	9	....
		(2 affirmed on appeal; others in Circuit Court)
Criminal Hearings Attended	18	....
Habeas Corpus Hearings Attended	4	....

Respectfully submitted,

E. DIXIE BEGGS, JR.
State Attorney

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
OKALOOSA:			
Homicide:			
First Degree	4	1	....
Second Degree	1	....	....
Manslaughter	3	4	....
Robbery:			
Unarmed	1	2	....

Assaults:

With intent to Commit Felony	9	1	1
Other Assaults	7	2	3
Burglary and Kindred Offenses	13	....	1

Larceny:

Of Automobiles	1	....	....
Kindred Offenses	4	2	....
False Pretenses and Kindred Offenses	1	3	....
Forgery, Counterfeiting and Kindred Offenses	4		

Trespasses, Injuring Buildings, etc.	6		
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Resisting Arrest, etc.	1	1	
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Adultery, Fornication, etc.	4	3	1
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Bigamy	1		
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Desertion and Withholding Support from Wife and Children	10	7	
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Miscellaneous Crimes Not Otherwise

Enumerated:

Operating Truck for Hire	1		
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Woods Burning	1		
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Maliciously Killing Hog	1		1
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Liquor Law Violations	2		
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Impersonating an Officer	1		
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OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	3	
Bond Validation Proceedings	8	....
Bond Estreuture Proceedings	6	....
Criminal Hearings Attended	6	....

Respectfully submitted,

E. DIXIE BEGGS, JR.
State Attorney

SANTA ROSA:

Homicide:

First Degree	3		
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Robbery:

Armed	3		
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Assaults:

With intent to Commit Felony	7	5	1
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Other Assaults	13	10	3
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Arson and Kindred Offenses	1	1	1
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Burglary and Kindred Offenses	10	4	
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Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
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Larceny:

Of Automobiles	1	
Kindred Offenses	3	3

Embezzlement:

Public Officers	2	
Other Kinds	1	

False Pretenses and Kindred Offenses	3	4
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Forgery, Counterfeiting and Kindred Offenses	2	
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Trespasses, Injuring Buildings, etc.	4	2 2
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Perjury	2	 2
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Resisting Arrest, etc.		4
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Adultery, Fornication, etc.	4	5 2
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Bigamy		1
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Desertion and Withholding Support from Wife and Children	6	5
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Miscellaneous Crimes Not Otherwise

Enumerated:

Election Law Violations		1
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Motor Transportation Act	1	2
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Nuisance		1
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Disposing of Mortgaged Property	1	
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Malicious Killing of Dog		2
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Hit and Run Drivers	2	
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OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	3	
Bond Validation Proceedings	1	.....
Bond Estreuture Proceedings	3	.....
Criminal Hearings Attended	10	.....
Habeas Corpus Hearings Attended	2	.....

Respectfully submitted,

E. DIXIE BEGGS, JR.

State Attorney

WALTON:

Homicide:

First Degree	1	3
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Second Degree	1	
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Manslaughter		1
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Robbery:

Unarmed		1
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Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
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Assaults:

With intent to Commit Felony	12	13	2
Other Assaults	5	12	1

Arson and Kindred Offenses	1	1	
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Burglary and Kindred Offenses	22	2	3
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Larceny:

Of Automobiles	2		
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Of Cattle	6	1	1
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Kindred Offenses	4	9	
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Embezzlement	2		
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False Pretenses and Kindred Offenses..	1	4	
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Forgery, Counterfeiting and Kindred			
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Offenses	2		
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Trespasses, Injuring Buildings, etc.....	7	7	3
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Perjury	1	2	
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Resisting Arrest, etc.		1	
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Adultery, Fornication, etc.	5	1	2
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Incest		2	
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Miscegenation		1	
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Crime Against Nature	2	3	
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Violation Liquor Law, Second Offense..		1	
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Desertion and Withholding Support			
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from Wife and Children		9	
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Miscellaneous Crimes Not Otherwise			
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Enumerated:			
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Election Law Violations		2	
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Culpable Negligence	2		
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Keeping Gambling House	1	1	
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Selling Mortgaged Property	1		
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Woods Burning	1		1
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OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	6	
Bond Validation Proceedings	2	.....
Criminal Hearings Attended	3	.....
Other Cases Not Enumerated Handled by State		
Attorney	3	.....

Respectfully submitted,

E. DIXIE BEGGS, JR.
State Attorney

SECOND JUDICIAL CIRCUIT

Franklin County
Gadsden County
Jefferson County
Leon County
Liberty County
Wakulla County

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
FRANKLIN:			
Homicide:			
First Degree	2	...	...
Robbery:			
Unarmed	...	2	...
Assaults:			
With intent to Commit Felony	8	3	1
Other Assaults	3	1	...
Burglary and Kindred Offenses	16	...	...
Larceny:			
Of Automobiles	4	...	...
Of Cattle	3	...	...
Kindred Offenses	1	...	...
Forgery, Counterfeiting and Kindred Offenses	3	...	...
Incest	1	...	...
Bigamy	1	...	...
Desertion and Withholding Support from Wife and Children	2	...	...
Miscellaneous Crimes Not Otherwise Enumerated:			
Injury to R. R. Property	3	...	...
Aiding Prisoner to Escape	5	...	1
Concealing Property Subject to a Lien	1	...	...
Hit and Run Driving	1	...	...
Conspiracy to Commit Illegal Of- fense	3	...	...
Temporarily Using Property With- out Consent	1	...	...
Conveying Tools Into Jail	1	...	...
Impersonating an Officer	...	1	...

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	4	4
Bond Validation Proceedings	1	...

Bond Estreasure Proceedings	2	....
Criminal Hearings Attended	12	....

Respectfully submitted,

O. C. PARKER, JR.
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
GADSDEN:			
Homicide:			
First Degree	7	2	....
Manslaughter	3	....	....
Rape	1	1	....
Robbery:			
Armed	2	....	....
Assaults:			
With intent to Commit Felony	13	3	....
Other Assaults	3	....	....
Arson and Kindred Offenses	2	1	1
Burglary and Kindred Offenses	68	4	9
Larceny:			
Of Automobiles	6	....	....
Of Cattle	2	....	....
False Pretenses and Kindred Offenses	6	5	1
Forgery, Counterfeiting and Kindred Offenses	4	....	....
Perjury	1	....	....
Incest	1	....	....
Bigamy	2	....	....
Crime Against Nature	1	....	....
Desertion and Withholding Support from Wife and Children	4	2	1
Miscellaneous Crimes Not Otherwise Enumerated:			
Inticing Female Immoral Purpose	1	1	1
Shooting Into Dwelling House	1	....	....

I attended Eleven (1) special terms of court in Gadsden County, during this period of time, mostly for the purpose of taking pleas of guilty.

Respectfully submitted,

O. C. PARKER, JR.

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	7	5
Bond Validation Proceedings	2	2

Bond Estreasure Proceedings	2	2
Criminal Hearings Attended	25	...

Respectfully submitted,

O. C. PARKER, JR.
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
JEFFERSON:			
Homicide:			
First Degree	4	1	...
Second Degree	2	...	...
Manslaughter	1	1	...
Rape	2	2	1
Assaults:			
With intent to Commit Felony	4	...	2
Other Assaults	2	...	...
Arson and Kindred Offenses	4	1	...
Burglary and Kindred Offenses	22	4	1
Larceny:			
Of Automobiles	5	...	...
Of Cattle	5	...	...
Kindred Offenses	2	1	3
False Pretenses and Kindred Offenses	4	1	...
Forgery, Counterfeiting and Kindred Offenses	3	...	...
Desertion and Withholding Support from Wife and Children	4	...	3
Miscellaneous Crimes Not Otherwise Enumerated:			
Shooting Into Dwelling House	2	...	1
Receiving Stolen Property	4	1	...
I attended six special terms of court during this period mostly for the pupose of accepting pleas of guilty.			

Respectfully submitted,

O. C. PARKER, JR.

	Number	Disposition
Appeals from Lower Court to Circuit Court	7	5
Bond Estreasure Proceedings	5	4
Criminal Hearings Attended	15	...

Respectfully submitted,

O. C. PARKER, JR.
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
LEON:			
Homicide:			
First Degree	6	1	....
Second Degree	7	1	....
Manslaughter	1	....	....
Robbery:			
Armed	2	....	....
Unarmed	5	2	1
Assaults:			
With intent to Commit Felony	24	3	2
Other Assaults	15	1	....
Burglary and Kindred Offenses	40	5	3
Larceny:			
Of Automobiles	21	....	....
Of Cattle	10	1	....
Kindred Offenses	5	....	....
Embezzlement:			
Other Kinds	4	....	....
False Pretenses and Kindred Offenses	9	1	1
Forgery, Counterfeiting and Kindred Offenses	16	1	2
Desertion and Withholding Support from Wife and Children	6	1	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Removing Property Subject to Lien	3	....	....
Shooting Into Dwelling House	3	....	....
Operating Motor Vehicle with- out License R. R. Com	19	....	....
Operating Car While Drunk Do- ing Prop. Damage	4	....	....
Selling Property Subject to Lien	9	....	....
Selling Intoxicating Liquor	7	....	....
Aiding Prisoner to Escape	3	....	....
Hit and Run Driving	2	....	....
Receiving Stolen Property	2	....	....
Engaging Business without License	5	....	....
Culpable Negligence	3	....	....
Selling Morphine	1	....	....
Not complying chain store act	8	....	....

NOTE: (I attended 28 special terms court, mostly for the takings pleas of guilty).

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	16	13
Bond Validation Proceedings	3	3

Bond Estreature Proceedings	6	6
Criminal Hearings Attended	40	....
Habeas Corpus Hearings Attended	2	....

Respectfully submitted,

O. C. PARKER, JR.
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
LIBERTY:			
Homicide:			
First Degree	1	1	1
Second Degree	3	....	....
Assaults:			
With intent to Commit Felony	9	....	1
Other Assaults	10	3	....
Burglary and Kindred Offenses	8	1	....
Larceny:			
Of Automobiles	3	1	1
Of Cattle	1	1	....
Kindred Offenses	1	....	....
Perjury .....	....	1	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Resisting Officer Performance of His Duty	1	1	....
Enticing Female for Purpose of Prostitution .....	....	1	....
Hit and Run Driving	1	....	....
Selling Whiskey	1	....	....
Wilful and Malicious Injury to Property	1	....	....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	5	4
Bond Estreature Proceedings	1	....
Criminal Hearings Attended	11	....

Respectfully submitted,

O. C. PARKER, JR.
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
WAKULLA:			
Homicide:			
Second Degree	2	.....	.....
Rape	1	.....	.....
Assaults:			
With intent to Commit Felony	3	.....	.....
Other Assaults	25	5	3
Arson and Kindred Offenses	1	1	.....
Burglary and Kindred Offenses	8	.....	.....
Larceny:			
Of Automobiles	2	1	1
Of Cattle	1	.....	.....
Perjury	1	.....	.....
Incest	1	.....	1
Desertion and Withholding Support from Wife and Children	6	1	.....
Miscellaneous Crimes Not Otherwise Enumerated:			
Shooting Into Dwelling House	1	.....	.....
Manufacturing Liquor Without Li- cense	1	.....	.....
Using Property Without Consent	3	.....	.....
Disposing Property Subject to Lien	3	.....	.....
Receiving Stolen Property	2	.....	.....
Wilful and Malicious Injury to Property of Another	4	.....	.....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	4	3
Bond Estreature Proceedings	1	.....
Criminal Hearings Attended	13	.....

Respectfully submitted,

O. C. PARKER, JR.
State Attorney.

THIRD JUDICIAL CIRCUIT

Columbia County
 Dixie County
 Hamilton County
 Lafayette County
 Madison County
 Suwannee County
 Taylor County

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
COLUMBIA:			
Homicide:			
First Degree	9	1	1 and 1 Mistrial
Second Degree	1	....	....
Manslaughter	2	....	....
Rape	2	....	....
Robbery:			
Armed	1	....	....
Assaults:			
With intent to Commit Felony	19	5	....
Other Assaults	1	....	....
Larceny:			
Of Automobiles	3	....	....
Of Cattle	4	....	....
Kindred Offenses	8	5	....
Embezzlement:			
Other Kinds	1	....	....
Forgery, Counterfeiting and Kindred Offenses			
.....	5	....	....
Perjury	1	....	....
Conspiracy	2	....	....
Adultery, Fornication, etc.	3	....	....
Violation Liquor Law	3	33	....
Desertion and Withholding Support			
From Wife and Children	13	....	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Breaking and Entering	29	6	....
Operating a Gambling Device	1	....	....
Keeping a House of Ill Fame	1	....	....
Carrying Concealed Weapon	1	....	....
Violation of Narcotic Laws	1	....	....
Total Number of Persons Against Whom Indictments and Informa- tion Were Filed			133
Total Number of Persons Indicted for Murder			13

Approximate Number of Matters and Cases Handled Before Grand Jury 325

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	4	....
Bond Estreature Proceedings	11	....
Criminal Hearings Attended	5	....
Habeas Corpus Hearings Attended	6	....
Other Cases Not Enumerated Handled by State Attorney	8	....

Respectfully submitted,

O. O. EDWARDS,

Assistant State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
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DIXIE:

Homicide:

First Degree	5		3
Rape	2	1	

Assaults:

With intent to Commit Felony	6	4	1
Other Assaults	11	....	....

Larceny:

Of Cattle	4		
Kindred Offenses	13		

False Pretenses and Kindred Offenses

Perjury	1		
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Resisting Arrest, etc.	1		
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Adultery, Fornication, etc.	12		
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Bigamy	1		
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Violation Liquor Law	2	3	
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Desertion and Withholding Support from Wife and Children	9	1	
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Miscellaneous Crimes Not Otherwise

Enumerated:

Cutting Fence of Another	6		
Breaking and Entering	14	1	

Having Gambling Devices and Ap- paratus	6	1	
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Destroying Personal Property of Another	1		
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Altering Marks of Animals of Others	3		
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Unlawful Having Possession of		
Mullet During Closed Season	2	
Aiding Prisoners to Escape	2	
Total Cases Handled by Grand Jury, Approximately		150

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	1	Dismissed
Criminal Hearings Attended	4	....
Habeas Corpus Hearings Attended	2	....
Other Cases Not Enumerated Handled by State		
Attorney	3	....

Respectfully submitted,

O. O. EDWARDS,

Assistant State Attorney.

Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
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HAMILTON:

Homicide:

First Degree	10	2	
Manslaughter	1		

Rape	2		
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Assaults:

With intent to Commit Felony	11	2	
Other Assaults	3		

Larceny:

Of Automobiles	1		
Kindred Offenses	2	5	

Embezzlement	1		
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False Pretenses and Kindred Offenses		1	
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Perjury	4		
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Adultery, Fornication, etc.	2	2	
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Bigamy	2		
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Violation Liquor Law,	17	4	
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Desertion and Withholding Support from Wife and Children	6	2	
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Miscellaneous Crimes Not Otherwise

Enumerated:

Breaking and Entering	12	2	
Entering Without Breaking	2		

Number of Persons Indicted			85
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Total Cases Handled by Grand Jury, Approximately			160
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OTHER CASES HANDLED

	Number	Disposition
Criminal Hearings Attended	9	
Habeas Corpus Hearings Attended	5	

Respectfully submitted,

O. O. EDWARDS,

Assistant State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
LAFAYETTE:			
Homicide:			
First Degree	1	.....	.....
Rape	2	1	.....
Robbery:			
Armed	2	.....	.....
Assaults:			
With intent to Commit Felony	6	1	1
Burglary and Kindred Offenses	1	.....	.....
Larceny:			
Of Cattle	3	.....	.....
Kindred Offenses	12	2	.....
Trespasses, Injuring Buildings, etc.	6	.....	.....
Adultery, Fornication, etc.	4	.....	.....
Violation Liquor Law .....	.....	5	.....
Desertion and Withholding Support from Wife and Children	2	.....	.....
Miscellaneous Crimes Not Otherwise Enumerated:			
Maiming, Wounding and Killing			
Animals of Another	2	.....	.....
Altering the Mark of an Animal			
Belonging to Another .....	.....	4	.....
Information Filed by State Attorney:			
Assault with Intent to Commit			
Murder	4	.....	.....
Armed Robbery	2	.....	.....
Breaking and Entering	1	.....	.....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	3	.....
		2 Reversed and
		1 Appeal Dismissed
Total Cases Handled by Grand Jury, Approximately		95

Respectfully submitted,

O. O. EDWARDS,

Assistant State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
MADISON:			
Homicide:			
First Degree	8	1	....
Second Degree	2	...	....
Manslaughter	3	2	....
Rape	2	...	....
Robbery:			
Armed	8	1	....
Unarmed	1	...	....
Assaults:			
With intent to Commit Felony	16	5	....
Other Assaults	3	1	....
Sending Threatening Communications		1	....
Arson and Kindred Offenses	1	...	....
Larceny:			
Of Automobiles	3	...	....
Of Cattle	4	...	....
Kindred Offenses	4	5	....
Embezzlement	2	1	....
False Pretenses and Kindred Offenses	3	...	....
Forgery, Counterfeiting and Kindred Offenses	4	...	....
Conspiracy	1	...	....
Adultery, Fornication, etc.	2	2	....
Violation Liquor Law	4	3	....
Desertion and Withholding Support from Wife and Children	5	2	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Breaking and Entering	24	5	....
Keeping House of Ill Fame	1	...	....
Exhibiting a Deadly Weapon	2	...	....
Operating a Gambling Device	1	...	....
Driving Auto Without Consent of Owner	1	...	....
Total Number of Persons Against Whom Indictments and Infor- mation Were Filed			112
Approximate Number of Matters and Cases Handled Before Grand Jury			225

OTHER CASES HANDLED

	Number	Disposition
Criminal Hearings Attended	6	....
Habeas Corpus Hearings Attended	4	

Other Cases Not Enumerated Handled by State

Attorney	5
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Respectfully submitted,

O. O. EDWARDS,

Assistant State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
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SUWANNEE:

Homicide:

First Degree	7	1	One Mistrial
Second Degree	1		
Manslaughter	1	1	

Mayhem	1		
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Robbery:

Armed	5		
Unarmed	1		

Assaults:

With intent to Commit Felony	12	2	
Other Assaults	6		

Arson and Kindred Offenses	1		
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Larceny:

Of Automobiles	2		
Of Cattle	4		
Kindred Offenses	7	2	

Embezzlement	1		
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False Pretenses and Kindred Offenses	1	2	
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Forgery, Counterfeiting and Kindred Offenses	4	6	
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Perjury		2	
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Resisting Arrest, etc.	1		
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Adultery, Fornication, etc.	3		
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Bigamy	1		
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Violation Liquor Law	14	6	
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Desertion and Withholding Support from Wife and Children	10	7	
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Miscellaneous Crimes Not Otherwise

Enumerated:

Breaking and Entering	24	4	
Maiming an Animal of Another	2		
Selling Bolita Tickets	1		
Unlawfully Obtained Morphine	2		
Unlawfully Selling Securities	1		
Hit and Run Driver	1		
Exposing Poisonous Substance	-		
Carrying a Concealed Weapon	1		
Aiding Prisoner to Escape	1	2	

Total Number of Persons Against Whom Indictments and Information Were Filed 148

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court, Fifteen; All dismissed and affirmed excepting three		
Bond Estreature Proceedings	20	....
Criminal Hearings Attended	6	....
Habeas Corpus Hearings Attended	6	....
Other Cases Not Enumerated Handled by State Attorney	6	....
Approximate Number of Matters and Cases Handled Before Grand Jury		300

Respectfully submitted,

O. O. EDWARDS,

Assistant State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
TAYLOR:			
Homicide:			
First Degree	4	1	....
Manslaughter		1	....
Rape	2	1	....
Robbery:			
Armed	1		....
Assaults:			
With intent to Commit Felony	19	5	....
Other Assaults	4		....
Arson and Kindred Offenses	3		....
Larceny:			
Of Automobiles	3		....
Of Cattle	7		....
Kindred Offenses	11	8	....
False Pretenses and Kindred Offenses	3		....
Forgery, Counterfeiting and Kindred Offenses	5		....
Trespasses, Injuring Buildings, etc.	7		....
Resisting Arrest, etc.	1		....
Adultery, Fornication, etc.	4		....
Violation Liquor Law	8	1	....
Desertion and Withholding Support from Wife and Children	22	3	....

Miscellaneous Crimes Not Otherwise

Enumerated:

Breaking and Entering	15	....	....
Unlawful possession of Mullet Fish	2	....	....
Unlawfully Using Vehicle of An- other	2	....	....
Keeping House of Ill Fame	5	....	....
Unlawfully Gather Sponges	3	....	....
Hit and Run Driver	1	1	....
Unlawfully Setting Woods Fire	2	....	....
Unlawfully Seineing River	1	....	....

Total Number of Persons Against Whom Indictments and Infor-
mation Were Filed 196

Approximate Number of Matters and Cases Handled Before Grand
Jury 260

OTHER CASES HANDLED

	Number	Disposition
Criminal Hearings Attended	5	....
Habeas Corpus Hearings Attended	4	....
Other Cases Not Enumerated Handled by State Attorney	6	....

Respectfully submitted,

O. O. EDWARDS,

Assistant State Attorney.

FOURTH JUDICIAL CIRCUIT

Clay County
Duval County
Nassau County

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
CLAY:			
Homicide:			
First Degree	3	....	1
Second Degree	1	....	1
Assaults:			
With intent to Commit Felony	2	....	....
Arson and Kindred Offenses	2	....	....
Larceny:			
Of Automobiles	1	....	....
Of Cattle	1	....	....
Desertion and Withholding Support from Wife and Children	2	....	....

Miscellaneous Crimes Not Otherwise

Enumerated:

Informations Filed by State Atty. 13

Respectfully submitted,

JOHN W. HARRELL,

State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
DUVAL:			
Homicide:			
First Degree	46	14	3
Second Degree	8		
Manslaughter	7		
Rape	5		

OTHER CASES HANDLED

	Number	Disposition
Bond Validation Proceedings	7	
Criminal Hearings Attended	125*	Exonerated 45
Habeas Corpus Hearings Attended	9	
Other Cases Not Enumerated Handled by State Attorney	20 of more	(Insanity, Mortgage Foreclosures, etc.)

*Of these 125 matters 45 were exonerated and the remaining 80 were held for further investigation by Grand Jury or other official action.

Respectfully submitted,

JOHN W. HARRELL,

State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
NASSAU:			
Homicide:			
First Degree	1		
Robbery:			
Armed	1		
Unarmed	1		
Assaults:			
With intent to Commit Felony	1		
Other Assaults	2		
Burglary and Kindred Offenses	1		

Larceny:

Of Automobiles	1		
Of Cattle	1		
Kindred Offenses	3		

Embezzlement:

Other Kinds	2		
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Offenses Against Public Revenue	2		
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Perjury	2		
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Violation Liquor Law, Second Offense	4		
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Miscellaneous Crimes Not Otherwise

Enumerated:

Informations Filed by State Atty. 18			
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Respectfully submitted,

JOHN W. HARRELL,

State Attorney.

FIFTH JUDICIAL CIRCUIT

Citrus County
Hernando County
Lake County
Marion County
Sumter County

Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
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CITRUS:

Homicide:

First Degree	6		3
Manslaughter	2		

Robbery:

Armed	4		
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Assaults:

With intent to Commit Felony	2	1	1
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Sending Threatening Communications	1		
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Burglary and Kindred Offenses	8	1	
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Larceny:

Of Cattle	2		
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Kindred Offenses	5		1
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Embezzlement:

Other Kinds	2		
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Forgery, Counterfeiting and Kindred			
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Offenses	2		
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Adultery, Fornication, etc.	1		
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Violation Liquor Law	3		
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Desertion and Withholding Support			
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from Wife and Children	1		
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Miscellaneous Crimes Not Otherwise

Enumerated:

Unlawful Possession of Mullet	3	
Hit and Run Driver	1	.....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	1	Convicted
Criminal Hearings Attended	5	Bound Over
Habeas Corpus Hearings Attended	2	Remanded

Respectfully submitted,

J. W. HUNTER,
State Attorney.

Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
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HERNANDO:

Homicide:

First Degree	7		1
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Rape		1	
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Robbery:

Armed	2		
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Assaults:

With intent to Commit Felony	9		1
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Burglary and Kindred Offenses	6		1
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Larceny:

Of Automobiles	7		
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Of Cattle	6		
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Kindred Offenses	2		2
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Forgery, Counterfeiting and Kindred

Offenses	2		
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Trespassing, Injuring Buildings, etc.....	1		
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Intercourse with Unmarried Female	1		1
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Violation Liquor Law	4		
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Miscellaneous Crimes Not Otherwise

Enumerated:

Altering Hog's Marks	1		
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Receiving Stolen Property	1		
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OTHER CASES HANDLED

	Number	Disposition
Criminal Hearings Attended	6	Bound Over
Habeas Corpus Hearings Attended	2	Remanded

Respectfully submitted,

J. W. HUNTER,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
LAKE:			
Homicide:			
First Degree	4	8	2
Manslaughter	1	.....	.....
Robbery:			
Armed	3	.....	2
Unarmed	1	.....	.....
False Improvement and Kidnapping	1	.....	.....
Assaults:			
With intent to Commit Felony	14	9	.....
Burglary and Kindred Offenses	26	8	.....
Larceny:			
Of Automobiles	4	1	.....
Kindred Offenses	12	3	1
Embezzlement	5	1	.....
False Pretenses and Kindred Offenses	5	.....	1
Forgery, Counterfeiting and Kindred Offenses	8	.....	1
Trespasses, Injuring Buildings, etc.	1	2	.....
Adultery, Fornication, etc.	2	2	.....
Violation Liquor Law	37	.....	.....
Desertion and Withholding Support from Wife and Children	7	1	.....
Miscellaneous Crimes Not Otherwise Enumerated:			
Receiving Stolen Goods	2	2	.....
Poisoning Animals	1	.....	.....
Malicious Attempt to Kill or Injure Animals	2	.....	.....
Gambling and Kindred Offenses ..	12	.....	1
Operating For Hire Vehicle With- out a License	1	.....	.....
Operating Cleaning and Pressing Business Without License	2	.....	.....
Failure to Stop and Assist Injured Persons	1	.....	.....
Aiding Prisoners to Escape	1	.....	1
Driving Auto While Intoxicated .....	.....	1	.....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	19	.....
Habeas Corpus Hearings Attended	7	.....
Other Cases Not Enumerated Handled by State Attorney	26	.....

Respectfully submitted,

J. W. HUNTER,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
MARION:			
Homicide:			
First Degree	10	2	1
Manslaughter	5	....	1
Robbery:			
Armed	4	1	....
Unarmed	1	....	....
Assaults:			
With intent to Commit Felony.....	12	7	....
Other Assaults	4	....	1
Burglary and Kindred Offenses	50	3	1
Larceny:			
Of Automobiles	13	....	....
Of Cattle	18	....	4
Kindred Offenses	20	....	4
Embezzlement:			
Public Officers	4	....	1
False Pretenses and Kindred Offenses	1	....	....
Forgery, Counterfeiting and Kindred Offenses	5	1	....
Trespasses, Injuring Buildings, etc.	1	....	....
Perjury	1	....	....
Adultery, Fornication, etc.	1	....	....
Incest	1	....	1
Crime Against Nature	2	....	....
Violation Liquor Law	9	....	1
Desertion and Withholding Support from Wife and Children	1	....	....
Miscellaneous Crimes* Not Otherwise Enumerated:			
Operating Motor Vehicle Without Permit from Railroad Commis- sioner	1	....	....
Slot Machine Violation	4	....	....
Fourth Offender	2	....	....
Conducting Lottery	1	....	....
Disposing of Property Under Lien ....	....	1	....
Driving while Drunk and Property Damage	3	....	....
Hit and Run Driver	1	....	....
Falsely Personating Office	2	....	....
Wilful and Wanton Killing of Animals	1	....	1
Setting Fire to Wild Forest	1	....	....

OTHER CASES HANDLED

	Number	Disposition
Appeals From Lower Court to Circuit Court	4	Tried
Bond Validating Proceedings	2	Defended
Criminal Hearings Attended	25	....
Habeas Corpus Hearings Attended	10	....

Respectfully submitted,

J. W. HUNTER,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
SUMTER:			
Homicide:			
First Degree	...	1	....
Manslaughter	2	2	1
Mayhem	2	....	....
Rape	...	1	....
Robbery:			
Unarmed	2	....	....
Assaults:			
With intent to Commit Felony	12	2	....
Burglary and Kindred Offenses	19	....	....
Larceny:			
Of Cattle	3	....	....
Kindred Offenses	8	....	....
Embezzlement	1	....	....
Forgery, Counterfeiting and Kindred Offenses	2	....	....
Intercourse with Unmarried Female ...	1	....	....
Bigamy	...	1	....
Violation Liquor Law	6	....	....
Desertion and Withholding Support from Wife and Children	...	1	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Receiving Stolen Goods	3	....	1

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	2	....
Criminal Hearings Attended	3	....
Habeas Corpus Hearings Attended	2	....

Respectfully submitted,

J. W. HUNTER,
State Attorney.

SIXTH JUDICIAL CIRCUIT

Pasco County

Pinellas County

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
PASCO:			
Homicide:			
First Degree	6	....	1
Second Degree	1	....	....
Manslaughter	1	....	....
Robbery:			
Attempted	2	....	....
Assaults:			
Aggravated	1 bound over Co. Court	....	....
With intent to Commit Felony	1	....	....
Burglary and Kindred Offenses	9	....	3
Larceny:			
Grand	1	....	....
Of Automobiles	1	....	....
Of Cattle	1	....	1
Embezzlement	1 bound over Co. Ct.	....	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Entering Without Breaking	5	....	....
Receiving Stolen Property	3	....	1
Possession of Stolen Property	1	....	....
Changing Marks on Animals	3	....	....
Sale of Intoxicating Beverages			
Without State Excise Tax	1	....	....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	3	....
Habeas Corpus Hearings Attended	1	....
I investigated and dismissed 12.		

Respectfully submitted,
CHESTER B. McMULLEN,
 State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
PINELLAS:			
Homicide:			
First Degree	9	....	....
Second Degree	1	....	....

Manslaughter	7	.....	.....
Rape	1	.....	.....
Robbery:			
Armed	6	.....	2
Unarmed	2	.....	1
False Imprisonment and Kidnapping ..	2	.....	.....
Assaults:			
With intent to Commit Felony	21	.....	2
Arson and Kindred Offenses	3	.....	1
Burglary and Kindred Offenses	50	.....	2
Larceny:			
Of Automobiles	15	.....	1
Of Cattle	2	.....	.....
Kindred Offenses Grand Larceny..	18	.....	2
Embezzlement	9	.....	.....
False Pretenses and Kindred Offenses	5	.....	.....
Forgery, Counterfeiting and Kindred			
Offenses	13	.....	.....
Adultery, Fornication, etc.	2	.....	.....
Bigamy	3	.....	.....
Crime Against Nature	5	.....	.....
Desertion and Withholding Support			
from Wife and Children	5	.....	.....
Miscellaneous Crimes Not Otherwise			
Enumerated:			
Conducting a Lottery	5	.....	.....
Sale of Intoxicating Beverages			
Without State Excise Tax	11	.....	.....
Removing Property Under Lien			
Out of County Without Consent			
of Owner	2	.....	.....
Possession and Sale of Lottery			
Tickets	5	.....	.....
Receiving Stolen Property	3	.....	1
Bastardy	1	.....	.....
Passing Worthless Draft	2	.....	.....
Exhibiting, Selling and Distribut-			
ing Obscene Literature	3	.....	.....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	17	.....
Bond Estreature Proceedings	9	.....
Habeas Corpus Hearings Attended	10	.....
Other Cases Investigated and Dismissed	32	.....

Respectfully submitted,
 CHESTER B. McMULLEN,
 State Attorney.

SEVENTH JUDICIAL CIRCUIT

Volusia County

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
VOLUSIA:			
Homicide:			
First Degree	10	9	.....
Second Degree	1	.....	.....
Manslaughter	5	3	.....
Rape	2	3	.....
Robbery:			
Armed	2	1	.....
Assaults:			
Intent to Murder	2	7	.....
With intent to Commit Felony	2	.....	.....
Other Assaults	11	8	.....
Arson and Kindred Offenses .....	.....	1	.....
Burglary and Kindred Offenses	3	.....	.....
Larceny:			
Of Automobiles	6	1	.....
Kindred Offenses	15	7	.....
Embezzlement:			
Other Kinds	4	5	.....
False Pretenses and Kindred Offenses	1	3	.....
Forgery, Counterfeiting and Kindred			
Offenses	7	5	.....
Breaking and Entering (Felony)	11	6	.....
Breaking and Entering (Misdemeanor)	10	7	.....
Adultery, Fornication, etc.	1	7	.....
Bastardy	3	.....	.....
Bigamy	1	2	.....
Killing an Animal of Another	2	.....	.....
Violating Narcotic Laws .....	.....	2	.....
Violation Liquor Law	23	2	.....
Desertion and Withholding Support			
from Wife and Children	4	6	.....
Miscellaneous Crimes Not Otherwise			
Enumerated: .			
Operating Fishing Boat Without			
License	2	.....	.....
Concealing Stolen Property	1	.....	.....
Operating Gambling Table .....	.....	2	.....
Illegal Voting .....	.....	10	.....
Illegal Fishing .....	.....	5	.....
Election Fraud Cases .....	.....	7	.....
Miscellaneous Cases	10	17	.....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	104	
Bond Validation Proceedings	29	
Bond Estreature Proceedings	3	
Criminal Hearings Attended "Investigations"	15	
Habeas Corpus Hearings Attended	70	
Other Cases Not Enumerated Handled By State		
Attorney	30	
Injunctions	1	

Respectfully submitted.

MURRAY SAMS,
State Attorney.

EIGHTH JUDICIAL CIRCUIT

Alachua County
Baker County
Bradford County
Gilchrist County
Levy County
Union County

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
ALACHUA:			
Homicide:			
First Degree	26	3	....
Second Degree	1	....	....
Manslaughter	2	....	....
Mayhem	1	....	....
Robbery:			
Armed	6	....	....
Unarmed	5	....	....
Assaults:			
With intent to Commit Felony	44	21	3
Other Assaults	5	4	....
Burglary and Kindred Offenses	78	26	2
Larceny:			
Of Automobiles	18	9	....
Kindred Offenses	14	11	....
Embezzlement:			
Other Kinds	7	2	....
False Pretenses and Kindred Offenses	4	....	1
Forgery, Counterfeiting and Kindred Offenses	18	....	....

Crime Against Nature	2	.....	.....
Violation Liquor Law, Second Offense	28	.....	3
Desertion and Withholding Support from Wife and Children	2	.....	.....
Miscellaneous Crimes Not Otherwise Enumerated	35	14	1
Witnesses examined	465	.....	.....
Conferences with Sheriff, Police Of- ficers and Witnesses	371	.....	.....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	36	34
Bond Validation Proceedings	2	2
Bond Estreature Proceedings	4	.....
Criminal Hearings Attended	61	.....
Habeas Corpus Hearings Attended	8	.....
Other Cases Not Enumerated Handled By State Attorney	5	.....

Respectfully submitted,

J. C. ADKINS,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
BAKER:			
Homicide:			
First Degree	8	1	.....
Robbery:			
Armed	2	2	.....
Assaults:			
With intent to Commit Felony	6	4	.....
Burglary and Kindred Offenses	6	2	1
Larceny:			
Of Automobiles	2	.....	.....
Of Cattle	3	2	.....
False Pretenses and Kindred Offenses	1	2	.....
Crime Against Nature	1	.....	.....
Violation Liquor Law, Second Offense	1	.....	.....
Miscellaneous Crimes Not Otherwise Enumerated:			
Witnesses examined	120	.....	.....
Conferences with Sheriff and Witnesses	18	.....	.....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	1	Nol pross
Criminal Hearings Attended	22	....

Respectfully submitted,

J. C. ADKINS,

State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
BRADFORD:			
Homicide:			
First Degree	3	....	....
Robbery:			
Armed	3	1	....
Assaults:			
With intent to Commit Felony	2	5	....
Other Assaults	3	....	....
Burglary and Kindred Offenses	12	4	....
Larceny:			
Of Automobiles	1	....	....
Of Cattle	1	....	....
Kindred Offenses	3	1	1
False Pretenses and Kindred Offenses	2	1	....
Crime Against Nature	2	....	....
Violation Liquor Law, Second Offense	3	....	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Gambling	1	....	1
Poisoning Food	2	....	....
Witnesses Examined	178	....	....
Conferences with Sheriff and Witnesses	56	....	....

OTHER CASES HANDLED

	Number	Disposition
Criminal Hearings Attended	16	....

Respectfully submitted,

J. C. ADKINS,

State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
GILCHRIST:			
Homicide:			
First Degree	2	2	....
Robbery:			
Armed .....	....	1	....
Assaults:			
With intent to Commit Felony	10	3	....
Burglary and Kindred Offenses	4	2	....
Larceny:			
Of Automobiles	3	....	....
Forgery, Counterfeiting and Kindred Offenses	1	1	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Witnesses examined	114	....	....
Conferences with Sheriff and Witnesses	22	....	....

OTHER CASES HANDLED

	Number	Disposition
Bond Validation Proceedings	1	....
Criminal Hearings Attended	16	....
Other Cases Not Enumerated Handled by State Attorney	4	....

Respectfully submitted,

J. C. ADKINS,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
LEVY:			
Homicide:			
First Degree	7	....	....
Robbery:			
Armed .....	....	2	....
Assaults:			
With intent to Commit Felony	6	2	1
Burglary and Kindred Offenses	7	2	....
Larceny:			
Of Automobiles	1	....	....
Of Cattle	2	1	....
Kindred Offenses	5	....	1
False Pretenses and Kindred Offenses	....	3	....
Violation Liquor Law, Second Offense	4	....	....

Desertion and Withholding Support from Wife and Children	1	4	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Hit and Run Drivers	2	....	....
Election Frauds	11	....	....
Witnesses examined	302	....	....
Conferences with Sheriff and Witnesses	76	....	....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	2	Nolle prosequi
Bond Validation Proceedings	6	6
Criminal Hearings Attended	21	....
Other Cases Not Enumerated Handled by State Attorney	2	Certified to Co. Judge.

Respectfully submitted,

J. C. ADKINS,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
UNION:			
Homicide:			
First Degree	1	2	....
Rape	1	....	....
Assaults:			
With intent to Commit Felony	7	1	1
Burglary and Kindred Offenses	2	1	....
Larceny:			
Of Automobiles	1	....	....
Of Cattle .....	....	1	....
Kindred Offenses	2	1	....
Embezzlement:			
Other Kinds	1	....	....
Adultery, Fornication, etc. ....	....	1	....
Violation Liquor Law, Second Offense	3	1	....
Desertion and Withholding Support from Wife and Children	1	....	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Witnesses examined	86	....	....
Conferences with Sheriff and Witnesses	22	....	....

OTHER CASES HANDLED

	Number	Disposition
Bond Validation Proceedings	1	....
Criminal Hearings Attended	14	....
Habeas Corpus Hearings Attended	21	....

Respectfully submitted,

J. C. ADKINS,
State Attorney.

NINTH JUDICIAL CIRCUIT

Indian River County
Brevard County
Martin County
Okeechobee County
Orange County
Osceola County
Saint Lucie County
Seminole County

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
INDIAN RIVER:			
Homicide:			
First Degree	8	1	1
Manslaughter	1	....	....
Robbery:			
Armed	3	....	....
False Imprisonment and Kidnapping	3	....	....
Assaults:			
With intent to Commit Felony	14	1	....
Other Assaults	2	....	....
Burglary and Kindred Offenses	21	2	5
Larceny:			
Of Automobiles .....	....	1	....
Kindred Offenses	2	....	....
Embezzlement:			
Other Kinds	2	1	....
False Pretenses and Kindred Offenses.	1	....	....
Forgery, Counterfeiting and Kindred			
Offenses	1	....	....
Resisting Arrest, etc.	1	....	....
Adultery, Fornication, etc.	2	....	2
Desertion and Withholding Support			
from Wife and Children		1	

Miscellaneous Crimes Not Otherwise

Enumerated:

Taking Timber	1	1
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OTHER CASES HANDLED

	Number	Disposition
Bond Validation Proceedings	2	affirmed
Bond Estreature Proceedings	6	estreated
Criminal Hearings Attended	55	....
Habeas Corpus Hearings Attended	4	....
Other Cases Not Enumerated Handled by State Attorney	1	....

Respectfully submitted,
MURRAY W. OVERSTREET,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
BREVARD:			
Homicide:			
First Degree	5	....	....
Manslaughter	1	....	1
Robbery:			
Armed	1	....	....
Assaults:			
With intent to Commit Felony	3	....	1
Other Assaults	3	....	1
Burglary and Kindred Offenses	11	....	1
Larceny:			
Of Automobiles	5	....	....
Of Cattle	5	....	....
Kindred Offenses	5	....	....
Embezzlement:			
Other Kinds	1	....	....
False Pretenses and Kindred Offenses	1	....	....
Forgery, Counterfeiting and Kindred Offenses	7	....	....
Resisting Arrest, etc.	1	....	....
Violation Liquor Law	1	....	....
Desertion and Withholding Support from Wife and Children	2	....	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Hit and Run Driving	1	....	....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	4	Convicted 4
Bond Estreature Proceedings	3	....
Criminal Hearings Attended	27	....
Habeas Corpus Hearings Attended	11	....
Other Cases Not Enumerated Handled by State Attorney	1	....

Respectfully submitted,
MURRAY W. OVERSTREET,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
MARTIN:			
Homicide:			
Manslaughter	1	....	....
Assaults:			
With intent to Commit Felony	5	....	....
Burglary and Kindred Offenses	3	....	....
Larceny:			
Of Cattle	1	....	....
Kindred Offenses	4	....	....
Bigamy	1	....	....

OTHER CASES HANDLED

	Number	Disposition
Bond Validation Proceedings	6	validated
Criminal Hearings Attended	15	....
Habeas Corpus Hearings Attended	3	....

Respectfully submitted,
MURRAY W. OVERSTREET,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
OKEECHOBEE:			
Homicide:			
First Degree	3	1	....
Manslaughter	1	....	1
Assaults:			
With intent to Commit Felony	1	....	....

Burglary and Kindred Offenses	1	.....	.....
Larceny	1	.....	1
Embezzlement	1	.....	.....

Respectfully submitted,
MURRAY W. OVERSTREET,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
ORANGE:			
Homicide:			
First Degree	3	1	.....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Courts to Circuit Court	4	Not disposed of
Bond Validation Proceedings	14	.....
Habeas Corpus Hearings Attended	15	.....
Petitions for Restoration of Sanity	10	.....

Respectfully submitted,
MURRAY W. OVERSTREET,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
OSCEOLA:			
Homicide:			
First Degree	1	.....	.....
Robbery:			
Armed	6	.....	1
Assaults:			
With intent to Commit Felony	4	.....	3
Burglary and Kindred Offenses	7	.....	.....
Larceny:			
Of Automobiles	2	.....	.....
Kindred Offenses	1	1	.....
Embezzlement	2	1	.....
Forgery, Counterfeiting and Kindred Offenses	10	.....	.....
Incest	1	.....	.....
Miscellaneous Crimes Not Otherwise Enumerated:			
Receiving Stolen Goods .....	.....	1	.....

Cutting Fence	5	....	1
Shooting into Dwelling	1	....	1
Secreting Property with Intent to Embezzle	2	....	....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	2	Not completed
Bond Validation Proceedings	3	....
Bond Estreuture Proceedings	1	....
Criminal Hearings Attended	27	....

Respectfully submitted,
MURRAY W. OVERSTREET,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
SAINT LUCIE:			
Homicide:			
Manslaughter	4	....	....
Rape	5	....	....
Assaults:			
With intent to Commit Felony	5	1	....
Other Assaults	1	1	....
Arson and Kindred Offenses	1	....	....
Burglary and Kindred Offenses	6	....	....
Larceny:			
Of Automobiles	6	....	....
Kindred Offenses	5	....	....
Embezzlement:			
Public Officers	1	....	....
Other Kinds	13	....	1
Forgery, Counterfeiting and Kindred Offenses	5	....	....
Perjury	1	....	....
Bigamy	1	....	....
Desertion and Withholding Support from Wife and Children	4	....	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Operating Gambling Room	1	....	....
Disbarment	1	....	1
Bastardy	1	....	1

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	2	affirmed
Bond Estreature Proceedings	12	Dismissed 4
Criminal Hearings Attended	74	.....
Habeas Corpus Hearings Attended	10	.....
Other Cases Not Enumerated Handled by State Attorney	2	.....

Respectfully submitted,
MURRAY W. OVERSTREET,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
SEMINOLE:			
Homicide:			
First Degree	10	4	1
Second Degree	2	.....	.....
Manslaughter	1	1	.....
Rape	1	1	.....
Robbery:			
Unarmed	2	.....	.....
Assaults:			
With intent to Commit Felony	8	2	.....
Other Assaults	2	2	.....
Arson and Kindred Offenses	3	1	.....
Burglary and Kindred Offenses	25	11	1
Larceny:			
Of Automobiles	4	1	.....
Of Cattle	2	.....	.....
Kindred Offenses	4	3	.....
Embezzlement:			
Public Officers	5	.....	.....
Other Kinds	6	1	2
False Pretenses and Kindred Offenses	2	.....	.....
Forgery, Counterfeiting and Kindred Offenses	8	2	.....
Trespasses, Injuring Buildings, etc.	1	.....	.....
Resisting Arrest, etc.	1	.....	.....
Adultery, Fornication, etc.	3	1	2
Desertion and Withholding Support from Wife and Children	10	5	.....
Miscellaneous Crimes Not Otherwise Enumerated	8	2	1

OTHER CASES HANDLED

	Number	Disposition
Criminal Hearings Attended	32	....
Habeas Corpus Hearings Attended	9	....
Other Cases Not Enumerated Handled by State		
Attorney (Suit Clerk's Bond)	1	Collected \$6000

Respectfully submitted,
MURRAY W. OVERSTREET,
State Attorney.

TENTH JUDICIAL CIRCUIT

Hardee County
Highlands County
Polk County

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
HARDEE:			
Homicide:			
First Degree	1	....	....
Rape .....	....	2	....
Robbery:			
Armed	4	....	....
Assaults:			
With intent to Commit Felony	6	....	....
Other Assaults	3	....	....
Burglary and Kindred Offenses	7	2	....
Larceny:			
Of Automobiles	5	....	....
Of Cattle	7	....	1
Kindred Offenses	7	....	1
Forgery, Counterfeiting and Kindred Offenses	4	....	1
Perjury	1	....	....
Adultery, Fornication, etc.	5	2	....
Desertion and Withholding Support from Wife and Children	4	....	2
Miscellaneous Crimes Not Otherwise Enumerated:			
Nuisance Injunctions	8	....	....
Remarks: This does not include de- tailed report of the many cases in- vestigated by the State Attorney in which he declined to file information. All of the cases referred to above ex- cept the one first degree murder were prosecuted upon informations.			

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	18	pending
Habeas Corpus Hearings Attended	7	....
Other Cases Not Enumerated Handled by State Attorney (Nuisance Injunctions)	8	Injunctions granted

Respectfully submitted,

L. GRADY BURTON,

State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
HIGHLANDS:			
Homicide:			
First Degree	1	....	....
Assaults:			
With intent to Commit Felony	19	....	4
Other Assaults	17	....	5
Arson and Kindred Offenses	1	....	1
Burglary and Kindred Offenses	26	....	5
Larceny:			
Of Automobiles	4	....	1
Of Cattle	2	....	1
Kindred Offenses	8	....	2
Embezzlement:			
Other Kinds	1	....	....
False Pretenses and Kindred Offenses	3	....	....
Forgery, Counterfeiting and Kindred Offenses	5	....	....
Resisting Arrest, etc.	2	....	1
Crime Against Nature	1	....	Insane
Desertion and Withholding Support from Wife and Children	4	....	3
Miscellaneous Crimes Not Otherwise Enumerated:			
Killing Animal of Another	2	....	....
Contempt Proceedings	1	....	....
Escape and Assisting Escape	5	....	....
Hit and Run Driver	3	....	1

Remarks: This does not include detailed report of the many cases investigated by the State Attorney in which he declined to file information. All of the cases referred to above except the one first degree murder were prosecuted upon informations.

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	2	Affirmed
Bond Validation Proceedings	2	....
Bond Estreature Proceedings	2	....
Habeas Corpus Hearings Attended	9	....

Respectfully submitted,

L. GRADY BURTON,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
POLK:			
Homicide:			
First Degree	22	7	....
Mayhem	4	....	....
Assaults:			
With intent to Commit Felony	2	....	....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	27	....
Bond Validation Proceedings	16	....
Habeas Corpus Hearings Attended	14	....
Other Cases Not Enumerated Handled by State Attorney	9	....

Respectfully submitted,

L. GRADY BURTON,
State Attorney.

ELEVENTH JUDICIAL CIRCUIT

Dade County
Monroe County

Covering Dade County and Monroe County, Eleventh Judicial Circuit of Florida, for Two Years (1935 and 1936) Under Section 132, Compiled General Laws.

	Indictments returned by Grand Jury.	"No Bills" returned by Grand Jury.
Homicide:		
First Degree	29	2
Second Degree	7	....
Manslaughter	2	....

Rape	6	7	
Incest	1		
Assault with Intent to Commit Rape	1		
Assault with Intent to Commit Murder	1		
Assault and Battery	2		
Embezzlement	5		
Perjury	6		
Conspiracy	16		
Obtaining Money under False Pretenses	4		
Obtaining Property under False Pretenses	7		
Accepting Bribes:			
Public Officials	1		
Malpractice	1		
Forgery (Monroe County)	1		
Obliterating Ballots (Monroe County)	1		
Perpetrating Fraud in Connection with Absentee Ballots (Monroe County)	1		
Obstructing Justice	1		
Compounding a Felony	3		
Robbery	2		
Resisting Officers	1		
Operating Gambling House through Agents and Servants	2		
Operating a Gambling House	31		
First Degree Murder			
Cases Prosecuted	Convictions	Acquittals	Nol Pros.
32	25	7	1
Rape Cases Prosecuted			
6	4	2	
Murder cases awaiting action of the Grand Jury ..	1		
Rape cases awaiting action of the Grand Jury	1		
Homicides Investigated and Referred to County Solicitor: (Not presented to Grand Jury)			
Murder in the Second Degree	11		
Manslaughter	11		
Abortions	4		
Other Miscellaneous Cases Referred to County Solicitor	57		
INVESTIGATION OF:			
Accidental deaths other than automobile accidents	72		
Justifiable homicides	29		
Natural causes	61		
Suicides	64		
Attempted Suicides	76		
Alleged Rape	18		
Combined murder and suicide cases not otherwise enumerated	6		
Assault with deadly weapon—with victim seriously injured	116		
Miscellaneous investigations	20		

Appeals from Lower Court to Circuit Court	98
Bond Validation Proceedings (Dade County)	17
Bond Validation Proceedings (Monroe County)	2
Bond Estreature Proceedings	53
Habeas Corpus Hearings Attended	94
Extraditions	7
Contempt Hearings	4
Disbarment Proceedings	6
Restoration of Sanity Hearings	18
Witnesses appearing before State Attorney in 1936	220
Witnesses appearing before Grand Jury in 1936	155
Inquests and Preliminary Hearings Attended—(Estimated)	150

Respectfully submitted,

G. A. WORLEY,
State Attorney.

TWELFTH JUDICIAL CIRCUIT

Charlotte County
Collier County
DeSoto County
Glades County
Hendry County
Lee County
Manatee County
Sarasota County

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
CHARLOTTE:			
Homicide:			
First Degree	2	.....	.....
Second Degree	1	.....	.....
Manslaughter	2	.....	1
Assaults:			
With intent to Commit Felony	2	.....	.....
Other Assaults	2	.....	.....
Burglary and Kindred Offenses	6	.....	.....
Larceny:			
Of Automobiles	1	.....	.....
Of Cattle	2	.....	2
Kindred Offenses	2	.....	.....
Embezzlement:			
Other Kinds	3	.....	.....
False Pretenses and Kindred Offenses..	1	.....	.....
Forgery, Counterfeiting and Kindred Offenses	2	.....	1

Crime Against Nature	1	...	not pros
Desertion and Withholding Support from Wife and Children	2	...	...
Miscellaneous Crimes Not Otherwise Enumerated:			
Killing cow	2	...	2 not pros
Culpable Negligence	1	...	...
Operating Auto Under Liquor, etc.	1	...	...
Possession Moonshine	1	...	...

*This report does not show a large number of investigations made by the State's Attorney personally, and for which no informations were filed, because of insufficient evidence or because misdemeanor rather than felony involved.

There are four cases on the docket, namely: No. 170, No. 177, No. 200 and No. 201 still pending.

OTHER CASES HANDLED

	Number	Disposition
Bond Validation Proceedings	1	...
Criminal Hearings Attended	2	...
Other Cases Not Enumerated Handled by State Attorney		* See above

Respectfully submitted,

ROY D. STUBBS,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
COLLIER:			
Homicide:			
Second Degree	1	...	...
Robbery:			
Armed	2	...	...
Assaults:			
With intent to Commit Felony	1	...	...
Other Assaults	1	...	...
Burglary and Kindred Offenses	1	...	...
Larceny:			
Of Automobiles	1	...	...
Resisting Arrest, etc.	2	...	1
Desertion and Withholding Support from Wife and Children	1	...	...
Miscellaneous Crimes Not Otherwise Enumerated:			
Unstamped Whisky	1	...	...

Possession Mullet out of season	5	....	....
Receiving Stolen Property	1	....	....

This report does not show quite a number of criminal investigations made by the State's Attorney, in which no informations were filed, because of insufficient evidence or because only misdemeanor of minor grade involved.

Respectfully submitted,
 ROY D. STUBBS,
 State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
DESOTO:			
Homicide:			
Third Degree		2	....
Assaults:			
With intent to Commit Felony	3	....	2
Burglary and Kindred Offenses	7	....	4
Larceny:			
Of Automobiles	3	....	....
Of Cattle	4	....	3
Embezzlement	1	....	....
Resisting Arrest, etc.	1	....	....
Desertion and Withholding Support from Wife and Children	1	....	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Altering Marks Hogs	3	....	....

**This report does not show quite a number of criminal investigations made by the State's Attorney, but in which no informations filed because of insufficient evidence or because only minor misdemeanor involved.

OTHER CASES HANDLED

	Number	Disposition
Bond Validation Proceedings	2	....
Habeas Corpus Hearings Attended	1	....
Other Cases Not Enumerated Handled by State Attorney .....	**	....

Respectfully submitted,
 ROY D. STUBBS,
 State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
GLADES:			
Homicide:			
First Degree	5	....	....
Assaults	1	....	nol pros
Arson and Kindred Offenses	6	....	1
Burglary and Kindred Offenses	1	....	....
Larceny:			
Of Cattle	2	....	1
Kindred Offenses	4	....	1
Violation Liquor Law	4	....	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Carnal Intercourse under 18	1	....	....
Enticing Female for Immoral Purposes	1	....	....
Illegal Possession Seine	2	....	....
Maliciously Injuring Personal Property	1	....	....

This report does not show a number of cases investigated by the State's Attorney but on which no informations were filed because of insufficient evidence or of misdemeanors not in jurisdiction of circuit court.

There are four (4) first degree murder cases from Glades undisposed of, where change of venue has been granted to Sarasota County and where a mistrial has been had and set again for trial 2-18-37.

Respectfully submitted,

ROY D. STUBBS,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
HENDRY:			
Homicide:			
First Degree	1	....	....
Second Degree	1	....	....
Rape	1	....	....
Assaults:			
With intent to Commit Felony	4	....	....
Burglary and Kindred Offenses	1	....	....
False Pretenses and Kindred Offenses	2	....	1
Resisting Arrest, etc.	1	....	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Prison Breach	1	....	....

Attempt Prison Breach	1	....	....
Altering Marks Hogs	3	....	3

This report does not show a number of investigations made by State Attorney and no informations filed because insufficient evidence or only misdemeanor involved.

Respectfully submitted,

ROY D. STUBBS,

State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
LEE:			
Homicide:			
First Degree	3	....	....
Second Degree	3	....	....
Manslaughter	2	....	....
Robbery:			
Armed	1	....	....
Assaults:			
With intent to Commit Felony	13	....	1
Burglary and Kindred Offenses	20	....	5
Larceny:			
Of Automobiles	6	....	2
Of Cattle	4	....	1
Kindred Offenses	6	....	....
Embezzlement:			
Other Kinds	1	....	1
Forgery, Counterfeiting and Kindred			
Offenses	4	....	1
Resisting Arrest, etc.	4	....	....
Violation Liquor Law, Second Offense..	1	....	....
Miscellaneous Crimes Not Otherwise			
Enumerated:			
Keeping Gambling House	3	....	....
Padlock Proceedings	4	....	....

*This report does not show a large number of cases investigated by State's Attorney personally and upon which no informations were filed, either because of insufficient evidence or because sworn testimony showed a misdemeanor.

There were five (5) other cases docketed during 35-36, which are undisposed of, viz: No. 29D, No. 168D, No. 176D, No. 178D and No. 179D. All other cases docketed during period '35-'36 have been disposed of.

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	3	....
Bond Validation Proceedings	1	....

Bond Estreature Proceedings	3	
Criminal Hearings Attended	2	
Habeas Corpus Hearings Attended	1	
Other Cases Not Enumerated Handled by State Attorney		*see above memo.

Respectfully submitted,

ROY D. STUBBS,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
MANATEE:			
Homicide:			
First Degree	1		
Second Degree	5		2
Manslaughter	6		3
Robbery:			
Armed	5		2
Unarmed	1		1
Assaults:			
With intent to Commit Felony	12		3
Sending Threatening Communications	1		
Burglary and Kindred Offenses	47		11
Larceny:			
Of Automobiles	4		
Of Cattle	2		2
Embezzlement	1		
Forgery, Counterfeiting and Kindred Offenses	6		
Resisting Arrest, etc.	3		
Miscellaneous Crimes Not Otherwise Enumerated:			
Kidnapping	1		1
Carnal Intercourse under 18	1		1

This report does not show large number of criminal investigations made by the State's Attorney where no information filed because insufficient evidence or minor misdemeanor only.

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	10	Pending
Bond Validation Proceedings	5	

Respectfully submitted,

ROY D. STUBBS,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
SARASOTA:			
Homicide:			
First Degree	1	....	....
Second Degree	4	....	2
Third Degree	1	....	....
Manslaughter	2	....	....
Robbery:			
Armed	3	....	1
Unarmed	2	....	1
Assaults:			
With intent to Commit Felony	7	....	....
Other Assaults	2	....	....
Arson and Kindred Offenses	1	....	....
Burglary and Kindred Offenses	34	....	7
Larceny:			
Of Automobiles	4	....	1
Of Cattle	2	....	....
Kindred Offenses	2	....	....
Embezzlement:			
Public Officers	1	....	1
Other Kinds	1	....	1
Forgery, Counterfeiting and Kindred			
Offenses	1	....	....
Resisting Arrest, etc.	1	....	....
Desertion and Withholding Support			
from Wife and Children	5	....	5

This report does not show large number of criminal investigations made by State Attorney and where no information filed because insufficient evidence or misdemeanor.

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	3	dismissed
Bond Validation Proceedings	5	....
Habeas Corpus Hearings Attended	2	....

Respectfully submitted,

ROY D. STUBBS,
State Attorney.

THIRTEENTH JUDICIAL CIRCUIT

Hillsborough County

Indictments No True Bills Verdict N.G.

A. Grand Jury

1. Rape	4		1
2. Homicide 1st degree	21	4	4
2nd degree	16	Certified to Crim. Ct. of Rec.	
Manslaughter	6	Certified to Crim. Ct. of Rec.	
3. Kidnapping	11	Certified to Crim. Ct. of Rec.	
4. Assault with Int. Rape	2	Certified to Crim. Ct. of Rec.	

B. Trials

Verdict Guilty Verdict N.G.

1. Murder ;	17	4	
2. Rape	3	1	
3. Bastardy	2	2	
4. Prosecuted and convicted five of kidnapping in Crim. Ct. of Record Polk County, Fla. Trial lasting 42 days.			

C. Preliminary Hearings Attended

1. Bastardy 4; 2. Murder 11; 3. Rape 2; 4. Coroner's Inquests 12.

D. Investigations not included above in which the testimony, recorded and transcribed, established justifiable homicide, suicide or death by natural causes; and in case of rape and bastardy insufficient evidence to warrant further prosecution:

1. Homicide 32; 2. Rape 5; 3. Bastardy 2.

E. Other cases concluded not shown above:

1. Habeas corpus 51; 2. Restoration to Sanity Proceedings 18;
 3. Disbarment of T. E. Lucas; 4. Denial of Petition of Talton Branch for reinstatement as member of the bar; 5. Three bond validation proceedings; 6. Permanent injunction secured against Frank J. Ryan under Florida Securities Act.

F. Special Investigations conducted or assisted in by State Attorney or Assistant State Attorney, each of which required more than 30 days:

1. Flogging cases resulting in death of Joseph Shoemaker; 2. Gambling investigation by Grand Jury; 3. Inves. by Grand Jury resulting in recommendation for removal of County Solicitor and County Traffic Chief; 4. Grand Jury Inves. of Election; 5. Inves. of Tyner poisoning case by State Attorney, Grand Jury and Preliminary Hearing therein.—(Items 2, 3 and 4 are not reported elsewhere herein.)

G. Miscellaneous not included above:

1. Handled collection items for Florida State Hospital; 2. Two investigations at request of State Attorney Worley of Miami—(Lucas and another homicide case); 3. Reported on several investigations made at the request of the Governor; 4. Assisted officers in four unsolved murder cases.

Respectfully submitted,

J. REX FARRIOR,

State Attorney.

FOURTEENTH JUDICIAL CIRCUIT

Bay County
 Calhoun County
 Gulf County
 Holmes County
 Jackson County
 Washington County

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
BAY:			
Homicide:			
First Degree	3	1	....
Second Degree	1	....	....
Manslaughter	5	3	1
Mayhem .....	....	1	....
Robbery:			
Unarmed	1	1	....
Assaults:			
With intent to Commit Felony	12	13	1
Other Assaults	10	3	1
Arson and Kindred Offenses	1	2	....
Burglary and Kindred Offenses	22	5	3
Larceny:			
Of Automobiles	3	4	1
Of Cattle	6	1	1
Kindred Offenses	3	3	....
Embezzlement	2	3	....
False Pretenses and Kindred Offenses	1	....	....
Forgery, Counterfeiting and Kindred			
Offenses	10	1	....
Trespasses, Injuring Buildings, etc.	1	....	....
Perjury	1	....	....
Adultery, Fornication, etc. ....	....	3	....
Desertion and Withholding Support			
from Wife and Children	13	2	....
Miscellaneous Crimes Not Otherwise			
Enumerated:			
Disposing of mortgaged property ..	1	1	....
Making liquor	1	....	....
Shooting animal	1	2	....
Selling liquor	6	2	....
Drunk driving	3	....	....
Hit and run	1	1	....
Obst. justice .....	....	1	....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	2	....
Criminal Hearings Attended	12	....
Habeas Corpus Hearings Attended	1	....
Other Cases Not Enumerated Handled by State Attorney	1	....

Respectfully submitted,

JOHN H. CARTER, Jr.,

State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
CALHOUN:			
Homicide:			
First Degree	3	1	2
Manslaughter	1	1	....
Assaults:			
With intent to Commit Felony	3	1	2
Other Assaults	9	8	3
Burglary and Kindred Offenses	4	4	1
Larceny:			
Of Automobiles	1	....	1
Of Cattle	1	....	....
Kindred Offenses	1	1	....
Embezzlement .....	....	1	....
False Pretenses and Kindred Offenses .....	....	1	....
Trespasses, Injuring Buildings, etc. ....	....	2	....
Resisting Arrest, etc.	1	....	....
Desertion and Withholding Support from Wife and Children	4	....	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Burning Woods	1	....	....
Defacing Building	2	....	....
Election laws .....	....	2	....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	8	6 aff., 2 rev.
Bond Validation Proceedings	2	1 Rev. by Sup. Ct.
Criminal Hearings Attended	8	....

Respectfully submitted,

JOHN H. CARTER, Jr.,

State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
GULF:			
Homicide:			
First Degree	1	....	....
Assaults:			
With intent to Commit Felony	2	1	1
Burglary and Kindred Offenses	2	....	....
Adultery, Fornication, etc. ....	....	1	....

OTHER CASES HANDLED

	Number	Disposition
Bond Validation Proceedings	2	....
Criminal Hearings Attended	7	....

Respectfully submitted,
 JOHN H. CARTER, Jr.,
 State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
HOLMES:			
Homicide:			
First Degree	5	4	....
Second Degree	1	....	....
Manslaughter	4	2	1
Rape	6	1	5
Robbery:			
Armed	1	....	1
Assaults:			
With intent to Commit Felony	6	1	....
Other Assaults	3	1	1
Arson and Kindred Offenses	1	1	....
Burglary and Kindred Offenses	12	1	....
Larceny:			
Of Automobiles	1	....	....
Of Cattle	4	....	1
Kindred Offenses	4	....	....
Forgery, Counterfeiting and Kindred Offenses			
Trespasses, Injuring Buildings, etc.	3	1	....
Conspiracy	1	....	....
Adultery, Fornication, etc.	1	....	....
Incest	2	....	....
Bigamy	1	....	....
Violation Liquor Law, Second Offense	2	....	....

Desertion and Withholding Support from Wife and Children	6	....	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Enticing a Female for Prostitution	2	....	....
Petit Larceny	11	....	....
Operating Auto while Drunk	1	....	....
Maiming an Animal	1	....	....
Burning Wild Woods	1	....	....
Disposing of Property Under Lien	1	....	....

OTHER CASES HANDLED

	Number	Disposition
Criminal Hearings Attended	17	....

Respectfully submitted,
JOHN H. CARTER, Jr.,
State Attorney.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
JACKSON:			
Homicide:			
First Degree	4	....	....
Manslaughter	8	1	2
Mayhem	1	....	....
Robbery:			
Armed	2	....	1
Unarmed	2	1	....
False Imprisonment and Kidnapping..	1	....	....
Assaults:			
With intent to Commit Felony	20	2	6
Other Assaults	15	7	....
Arson and Kindred Offenses	1	....	1
Burglary and Kindred Offenses	19	9	3
Larceny:			
Of Automobiles	4	....	1
Of Cattle	9	....	2
Kindred Offenses	8	5	1
Embezzlement	1	....	....
False Pretenses and Kindred Offenses	2	2	....
Forgery, Counterfeiting and Kindred Offenses	11	....	....
Trespasses, Injuring Buildings, etc.	3	2	....
Offenses Against Public Revenue	8	....	1
Perjury	5	1	3
Bribery	1	....	....

Resisting Arrest, etc.	1	1	....
Adultery, Fornication, etc.	4	2	....
Desertion and Withholding Support from Wife and Children	20	6	2
Miscellaneous Crimes Not Otherwise Enumerated:			
Disposing of Mortgaged Property..	4	....	....
Shooting into building	1	....	....
Shooting animal	1	....	....
Obstructing railroad track	2	....	....
Selling liquor	6	....	....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	4	....
Bond Validation Proceedings	6	....
Criminal Hearings Attended	5	....

Respectfully submitted,
JOHN H. CARTER, Jr.,
State Attorney.

Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
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WASHINGTON:

Homicide:

First Degree	2	1	
Manslaughter	1		

Robbery:

Armed	2		
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Assaults:

With intent to Commit Felony	13	11	1
Other Assaults	2		
Arson and Kindred Offenses		1	
Burglary and Kindred Offenses	15	2	2

Larceny:

Of Automobiles	3	....	....
Of Cattle	3	....	2
Kindred Offenses	6	2	2

Forgery, Counterfeiting and Kindred
Offenses

Offenses	4	1	....
Perjury	1	....	....
Resisting Arrest, etc. ....	....	2	....
Adultery, Fornication, etc.	3	2	1
Incest	1	1	....
Violation Liquor Law, Second Offense	3	....	1

Desertion and Withholding Support from Wife and Children	10	1	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Burning Wild Woods	1	1	....
Aiding Escape	1	....	....
Throwing Missile in Dwelling House	1	1	....
Sodomay	1	....	....
Hit and Run Driver	1	1	....
Operating Automobile while Drunk, etc.	1	....	....

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	5	....
Criminal Hearings Attended	16	....
Habeas Corpus Hearings Attended	1	....

Respectfully submitted,
JOHN H. CARTER, Jr.,
State Attorney.

FIFTEENTH JUDICIAL CIRCUIT

Palm Beach County

1. State versus O. B. Cunningham
Indicted First Degree Murder
Convicted Murder in Second Degree
2. State versus C. A. Lyons
Indicted First Degree Murder
Convicted of Manslaughter
3. State versus James Coswell
Indicted First Degree Murder
Convicted Manslaughter
4. State vs. Mabel Henry
Indicted First Degree Murder
Convicted Murder in Second Degree
5. State Ex Rel. Ethel Boyd vs. D. S. Harris
Bastardy Proceeding
Judgment of Guilty
6. State vs. Baby Mills
Indicted First Degree Murder
Convicted Manslaughter
7. State vs. Will Childs
Indicted First Degree Murder
Convicted Manslaughter

8. State vs. Albert Reed
Indicted First Degree Murder
Convicted Murder in Second Degree
9. State vs. Ernest Beasley
Indicted First Degree Murder
Mistrial—Second Trial Convicted First Degree Murder
Recommendation Mercy
10. State vs. A. B. Parker
Indicted First Degree Murder
Convicted First Degree Murder with Recommendation of Mercy
11. State vs. Tom Welborn
Indicted First Degree Murder
Died in jail awaiting trial
12. State vs. Richard Daniells
Indicted First Degree Murder
Convicted Manslaughter
13. State vs. Ella Harden
Indicted First Degree Murder
Convicted Manslaughter
14. State vs. Charlie Davis, Jack Williams, Izell Chambers and Walter Woodward
Indicted First Degree Murder—Broward County
Trial on Writ of Error Coram Nobis Palm Beach County
Judgment for State
15. State vs. Willie Wilson
Indicted First Degree Murder
Convicted Second Degree Murder
16. 8 Habeas Corpus Hearings.

Respectfully submitted,
J. W. SALISBURY,
State Attorney.

XIII.

COUNTY SOLICITORS

REPORTS OF COUNTY SOLICITORS, CRIMINAL COURTS OF
RECORD FOR YEARS 1935-6 UNDER SECTION 132 C. G. L.

Dade County
Duval County
Escambia County
Hillsborough County
Monroe County
Orange County
Palm Beach County
Polk County

DADE:

Offense	Cases Committed by Justice Ct. on which "No Information" was announced		Convictions Including Guilty Pleas	
		Nolle Proseque		Acquittals
Abortion	1	0	0	0
Arson	...	1	...	...
Assaults (Felony)	9	12	28	9
Adultery	1	3	...	...
Bigamy	...	1	2	...
Breaking and Entering	19	23	124	13
Crime Against Nature	...	5	5	...
Desertion (Family)	12	38	8	...
Embezzlement	10	26	8	6
Public Office	...	...	1	...
Extortion	1	2	...	...
False Pretense, etc.	13	5	12	1
Forgery, etc.	...	5	9	...
Gambling	6	12	24	...
Homicide:				
2nd Degree	1	4	4	2
Manslaughter	3	8	11	5
Incest	...	...	1	...
Larceny:				
Auto	3	4	27	...
Grand Larceny	14	16	51	4
Receiving Stolen Property	4	24	38	16
Lottery	...	13	...	...
Narcotic	2	2	11	...
Obscene Print	...	1	1	...
Perjury	3	5	1	...
Rape (Statutory)	...	8	2	...

Robbery	7	20	17	12
Stimulating Race Horse	...	1	2	...
Kidnapping	...	...	1	...
Fornication	...	...	3	...
Operating Motor Car Under In- fluence of Liquor	1	3	55	2
Drunkenness	3	3	122	2
Assault and Battery	8	22	83	10
Petit Larceny	8	17	93	7
Liquor Law Violations	3	11	15	...
Motor Vehicle Law Violations	5	11	97	8
Beating Board Bill	2	7	9	3
Aggravated Assault	6	15	33	14
Possession Stolen Property	1	...	1	1
Violation Insurance Laws	...	...	4	...
Gambling	1	7	53	...
Vagrancy	2	8	74	6
Doing Business Without a License	...	5	6	1
Violations of Child Labor Law	1	...	...	...
Violation Dying and Cleaning Act ..	1	20	...	2
Worthless Checks	2	10	33	...
Use of Motor Vehicle Without Owner's Consent	1	5	25	...
Concealed Weapons	...	3	20	2
Trespass	5	...	9	1
Cruelty to Children	1	...	1	...
Milk Law Violation	...	5	11	1
Beauty Culture Violations	...	...	1	...
Bribery	...	...	...	1
Malicious Mischief	...	1	4	5
Removing Palms from National Park	...	...	7	...
Embezzlement, Less Than Fifty Dollars	2	3	4	2
Violation Barber Law	1	3	...	1
Profane Language	...	...	1	...
Nuisances	...	3	...	1
Sale of Firearms to Minors	...	1	1	...
Imputing Want of Chastity	1	1	1	1
Game Law Violation	3	2	17	...
Removing Property Under Lien	...	...	2	...
Conspiracy	...	1	3	1
Indecent Exposure	...	2	2	1
Resisting an Officer	...	1	2	...
Practicing Medicine Without a License	...	1	3	...
Possession of Dynamite	...	...	1	...
Contributing to Delinquency of a Minor	...	4	4	...

Disturbing Church Service	1	1	....
Violation Sanitary Law .....	....	3	....
Attempted Suicide:			

NOTE: One case attempted suicide dismissed by writ of habeas corpus
One case estreated bond (concealed weapons)—no alias asked.

Miscellaneous Violations	2	5	....
Violation Egg Law .....	....	2	....

Sub-Totals

Felonies	109	239	388	69
Misdemeanors	57	178	808	75
Grand Totals	166	417	1,196	144

Grand Total

2,161 Cases filed between Sept. 12, 1935 and January 1, 1937

1,923 Cases disposed of as above

238 Cases on which defendant has not yet been apprehended and those awaiting trial.

It is impossible at this time, because of lack of time, to give an itemized report of the number of informations filed by me on which no arrests have been made covering the period of time above stated. By co-operation of W. Cecil Watson, the new clerk of the Criminal Court of Record, Dade County, after this we will be able to give a complete, itemized, detailed report of every case filed in the Criminal Court of Record.

Respectfully submitted,

ROBT. R. TAYLOR,
County Solicitor.

Informations Filed by Co. Solicitor	No Bills Returned by Co. Solicitor	Verdicts of Not Guilty Returned.
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DUVAL:

Homicide:

Second Degree	8		4
Manslaughter	22	1	12
Mayhem	2		1

Robbery:

Armed	97	3	20
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Assaults:

With intent to Commit Felony	314	4	31
Other Assaults	157	6	33
Libel and Defamation	2	1	2
Sending Threatening Communications	1	2	....
Arson and Kindred Offenses	9	....	4
Burglary and Kindred Offenses	483	4	24

Larceny:

Grand Larceny	210	1	18
Of Automobiles	4	....	....
Of Cattle	3	....	....
Kindred Offenses	793	14	46
Embezzlement	42	....	6
False Pretenses and Kindred Offenses	8	3	2
Forgery, Counterfeiting and Kindred			
Offenses	33	1	1
Trespasses, Injuring Buildings, etc.	22	6	8
Perjury	1	1	....
Resisting Arrest, etc.	2	....	....
Conspiracy	2	1	....
Adultery, Fornication, etc.	32	1	6
Bigamy	1	....	1
Crime Against Nature	12	....	4
Violation Liquor Law	37	1	5
Desertion and Withholding Support			
from Wife and Children	37	3	5
Miscellaneous Crimes Not Otherwise			
Enumerated:			
Exhibition of Deadly Weapon	43	1	4
Violation Narcotic Act	25	....	5
Receiving Stolen Goods	28	2	3
Uttering Indecent Language	82	5	5
Beating Board Bill	20	....	5
Common Drunkard	39	10	1
Violation Game Laws	18	....	5
Malicious Injury to Animals	12	1	3
Operation Motor Vehicle in a			
Reckless Manner, Without Li-			
cense, Obstructing Highway, Hit			
and Run, etc.	651	30	34

OTHER CASES HANDLED

	Number	Disposition
Appeals from Lower Court to Circuit Court	4	1 Remanded to Criminal Court.
Bond Estreature Proceedings	117	25 Collected

Respectfully submitted,

L. A. HOWELL,
County Solicitor.

	Indictments Returned by Grand Jury.	Verdicts of Guilty Returned	Verdicts of Not Guilty Returned
ESCAMBIA:			
Homicide:			
Second Degree	9	....	1
Manslaughter	5	....	2
Robbery:			
Armed	7	....	3
Unarmed	5	....	1
Assaults:			
With intent to Commit Felony	21	....	3
Other Assaults	215	....	14
Libel and Defamation	1	....	1
Burglary and Kindred Offenses	23	....	4
Larceny:			
Of Automobiles	3	....	....
Of Cattle	12	....	....
Kindred Offenses	269	....	34
Embezzlement	3	....	....
False Pretenses and Kindred Offenses	7	....	....
Forgery, Counterfeiting and Kindred			
Offenses	25	....	....
Trespassing, Injuring Buildings, etc.	49	....	6
Offenses Against Public Revenue	37	....	3
Resisting Arrest, etc.	4	....	1
Conspiracy	5	....	3
Adultery, Fornication, etc.	9	....	2
Crime Against Nature	1	....	....
Desertion and Withholding Support			
from Wife and Children	3	....	....
Miscellaneous Crimes Not Otherwise			
Enumerated:			
Vagrancy	25	....	3
Driving while drunk	37	....	5
Being drunk	331	....	2
Carrying concealed weapons	24	....	3
Gambling	5	....	....
Passing school bus while same was			
discharging passengers	1	....	....
Public use of indecent and obscene			
language	13	....	4
Reckless exhibition of deadly			
weapon	12	....	4
Reckless driving	35	....	7
Maiming of animal	3	....	....
Operating car with improper lights	3	....	....
Unlawful fishing	10	....	1
Violation of Barber Law	4	....	....

Disturbing public worship	2	.....	1
Hauling piling after night	1	.....	.....
Possessing Narcotic Drug	8	.....	.....
Selling Narcotic Drug	8	.....	5
Not publishing name of person charged with acts of immortality	1	.....	1
Leaving scene of accident unlaw- fully	5	.....	3
Possession of liquor unlawfully	1	.....	.....
Total	1242	1125	117

OTHER CASES HANDLED

	Number	Disposition
Habeas Corpus Hearings Attended	1	Prisoner re- manded to Sheriff

Respectfully submitted,
JOHN LEWIS REESE,
County Solicitor.

	Plead Guilty or Convicted	Acquitted	Nolle Prossed	Dismissed by Court	Total
HILLSBOROUGH:					
Homicide:					
2nd degree murder	3	.....	.....	.....	3
Manslaughter	6	.....	1	1	8
Mayhem	1	.....	.....	.....	1
Robbery:					
Armed	15	1	.....	.....	16
Unarmed	6	1	.....	.....	7
Assaults:					
To rape	4	.....	.....	.....	4
To rob	1	.....	.....	.....	1
To murder	11	4	1	1	17
To commit Manslaughter ..	1	.....	.....	.....	1
Aggravated	52	1	.....	.....	53
Asst. and Battery	25	4	.....	1	30
Simple	5	.....	.....	.....	5
Affray	1	.....	.....	.....	1
Attempts to commit felonies	12	.....	.....	.....	12
Adultery	1	.....	.....	.....	1
Burglary	143	1	.....	.....	144
Bigamy	3	.....	.....	.....	3
Beating board bill	3	.....	.....	.....	3
Beating way on train	166	.....	.....	.....	166
Firearms Law violation	10	.....	.....	.....	10

Contributing to minor's delinquency	1		1	2
Crime against nature	4			4
Conspiracy	1			1
Carnal intercourse with girl under 18	1			1
Destroying personal property	3			3
Habitual drunks	7			7
Being drunk	71			71
Driving while drunk	50	2		52
Entering without breaking	15			15
Embezzlement	15	1		16
Escape	9			9
Forgery	40	2		42
Gambling cases	6	2	2	10
Game law violations	1			1
Illegal voting		1		1
Impersonating officer	1			1
Insurance law violation	1			1
Incest	1			1
Killing beast of another	2			2
Larceny:				
Automobile	26	4		30
Cattle	3			3
Other animals	1			1
Grand	22	2		24
Petit	242	1		243
Lewd and Lascivious behavior ..	2			2
Liquor law violation	23	7	1	31
Milk Control Board law violation	2			2
Narcotic violation	11			11
Obtaining money under false pretense	14			14
Operating a nuisance	3			3
Poll Tax law violation			2	2
Profanity in public	7			7
Pharmacy law violation	1			1
Property under lien, removing, etc.	6			6
Real Estate Commission Act viol.	1			1
Receiving stolen property	12			12
Reckless driving	38	2		40
Traffic law violations	26		1	27
Trespass	8	2		10
Taking and using car without consent of owner	13	1		14
Unlawful gas pipe connection ..	8			8
Vagrancy	41			41

Worthless checks	26	1	....	1	28
Withholding support from minors	2	....	....	....	2

Respectfully submitted,

LEROY ALLEN,
County Solicitor.

	Informations Filed	Nolle Prossed	Verdicts of Not Guilty Returned
MONROE:			
Assaults:			
With intent to Commit Felony	3	....	....
Other Assaults	44	15	3
Arson and Kindred Offenses	1	1	....
Burglary and Kindred Offenses	20	1	1
Larceny:			
Kindred Offenses	25	5	....
Embezzlement	11	3	1
False Pretenses and Kindred Offenses	4	2	....
Forgery, Counterfeiting and Kindred Offenses	1	....	....
Trespasses, Injuring Buildings, etc.	3	....	1
Resisting Arrest, etc.	2	1	1
Desertion and Withholding Support from Wife and Children	9	5	....
Miscellaneous Crimes Not Otherwise Enumerated:			
Vagrancy	34	9	2
Drunkenness	6	2	....
Violation of gambling laws	12	1	....
Receiving stolen property	3	....	....
Profane, vulgar, and indecent (language)	12	4	1
Selling liquor without a license	7	3	....
Driving a motor vehicle while un- der influence of liquor	6	1	....
Reckless driving	5	2	....
Violation of election laws	1	....	1
Improper exhibition of a dan- gerous weapon	3	1	1
Violation of State Plant Board Act of 1927	20	....	....
Malicious destruction of personal property	3	....	....
Indecent exposure	2	....	....

Operating a motor vehicle without proper license	3	.....	1
Imputing a want of chastity	4	.....	1
Interfering with officer in the performance of his duties	3	3	.....
Discharging firearms on the public highway	2	.....	.....
Taking and using temporarily the property of another	1	.....	.....
Trespass after warning	1	.....	1
Carnal intercourse with an unmarried female under the age of 18 years	1	1	.....
Trespass by cutting and removing timber	1	.....	.....

OTHER CASES HANDLED

	Number	Disposition
Criminal Hearings Attended	59	.....

Respectfully submitted,
 ALLAN B. CLEARE, Jr.,
 County Solicitor.

	Informations Filed	Verdict of Not Guilty Returned
ORANGE:		
Homicide:		
Manslaughter	19	5
Robbery:		
Armed	13	3
Unarmed	2	3
Assaults:		
With intent to Commit Felony	39	9
Other Assaults	96	12
Arson	2	.....
Burglary and Kindred Offenses	98	9
Larceny:		
Of Automobiles	10	2
Larceny of Fruit	14	2
Other Larcenies	87	17
Forgery	18	2
Incest	4	.....
Bigamy	1	.....
Selling Liquor	1	1
Desertion and Withholding Support	9	.....

Reckless Driving and Driving while Drunk	344	52
Other Traffic Violations	291	6
Miscellaneous Misdemeanors	374	12
Totals	1422	132

Respectfully submitted,
O. RAYMOND ELLARS,
County Solicitor.

	Informations Filed	Information Nolled	Verdicts of Not Guilty Returned
PALM BEACH:			
Homicide:			
Second degree	12	3	5
Manslaughter	3	1	...
Mayhem	1	1	...
Abortion	1	...	...
Accessories to felony	16	8	...
Robbery:			
Armed	20	4	4
Unarmed	12	3	...
Assaults:			
With intent to Commit Felony	68	21	5
Other Assaults	69	28	3
Sending Threatening Communications	1	...	...
Arson and Kindred Offenses	2	...	...
Burglary and Kindred Offenses	182	23	7
Larceny:			
Grand Larceny	40	6	...
Of Automobiles	48	13	2
Of dog	1	...	...
Of Horse	1	...	...
Petit Larceny	126	19	...
Embezzlement	13	4	...
False Pretenses and Kindred Offenses	5	...	...
Forgery, Counterfeiting and Kindred Offenses	8	...	...
Violation RR Commission Act	47	5	...
Trespasses, Injuring Buildings, etc.	10	4	...
Removing Mortgaged Property	4	1	...
Temp. Using Property of Another	8	3	...
Enticing unmarried person	1	1	...
Profanity	6	2	...
Shooting in Dwelling	3	...	...
Conspiracy	1	1	...
Adultery, Fornication, etc.	15	6	...
Incest	2	...	...

Bigamy	2	.....	.....
False swearing	3	2	.....
Crime Against Nature	2	1	1
Violation Liquor Law	38	17	.....
Desertion and Withholding Support from Wife and Children	43	8	.....
Miscellaneous Crimes Not Otherwise Enumerated:			
Gambling	17	6	.....
Concealed Weapons	16	2	.....
Passing School Bus	2	1	.....
Obstructing Highway	5	5	.....
Reckless Driving	48	14	.....
Driving while Drunk	37	2	.....
Receiving Stolen Property	20	7	.....
Drunkenness	34	5	.....
Impersonating officer	1	.....	.....
Malicious Mischief	10	6	.....
Illegal Fishing and Hunting	16	.....	1
Improper License and Lights	15	4	.....

Respectfully submitted,

W. E. ROEBUCK,
County Solicitor.

	Indictments Returned by Grand Jury.	No Bills Returned by Grand Jury.	Verdicts of Not Guilty Returned.
POLK:			
Homicide:			
Second Degree	4	.....	1
Manslaughter	5	.....	1
Mayhem	1	.....	.....
Robbery:			
Armed	2	.....	.....
False Imprisonment and Kidnapping..	5	.....	1
Assaults:			
With intent to Commit Felony	63	.....	7
Other Assaults	156	.....	12
Sending Threatening Communications	5	.....	1
Burglary and Kindred Offenses	100	.....	7
Larceny:			
Of Automobiles	16	.....	3
Of Cattle	5	.....	.....
Kindred Offenses	191	.....	14
Embezzlement:			
Public Officers	3	.....	1
Other Kinds	18	.....	.....

False Pretenses and Kindred Offenses	49	....	....
Forgery, Counterfeiting and Kindred Offenses	8	....	2
Trespasses, Injuring Buildings, etc.	30	....	2
Offenses Against Public Revenue	38	....	1
Adultery, Fornication, etc.	9	....	....
Incest	1	....	....
Crime Against Nature	3	....	....
Violation Liquor Law	49	....	....
Desertion and Withholding Support from Wife and Children	9	....	1
Miscellaneous Crimes Not Otherwise Enumerated:			
Drunk	431	....	1
Driving Drunk	72	....	4
Concealed Weapons	22	....	....
Reckless Driving	36	....	1
Vagrancy	75	....	....
Game Laws	9	....	....
Cruelty Animals	5		1
Hit and Run	2		

Respectfully submitted,

MANUEL M. GLOVER,

County Solicitor.

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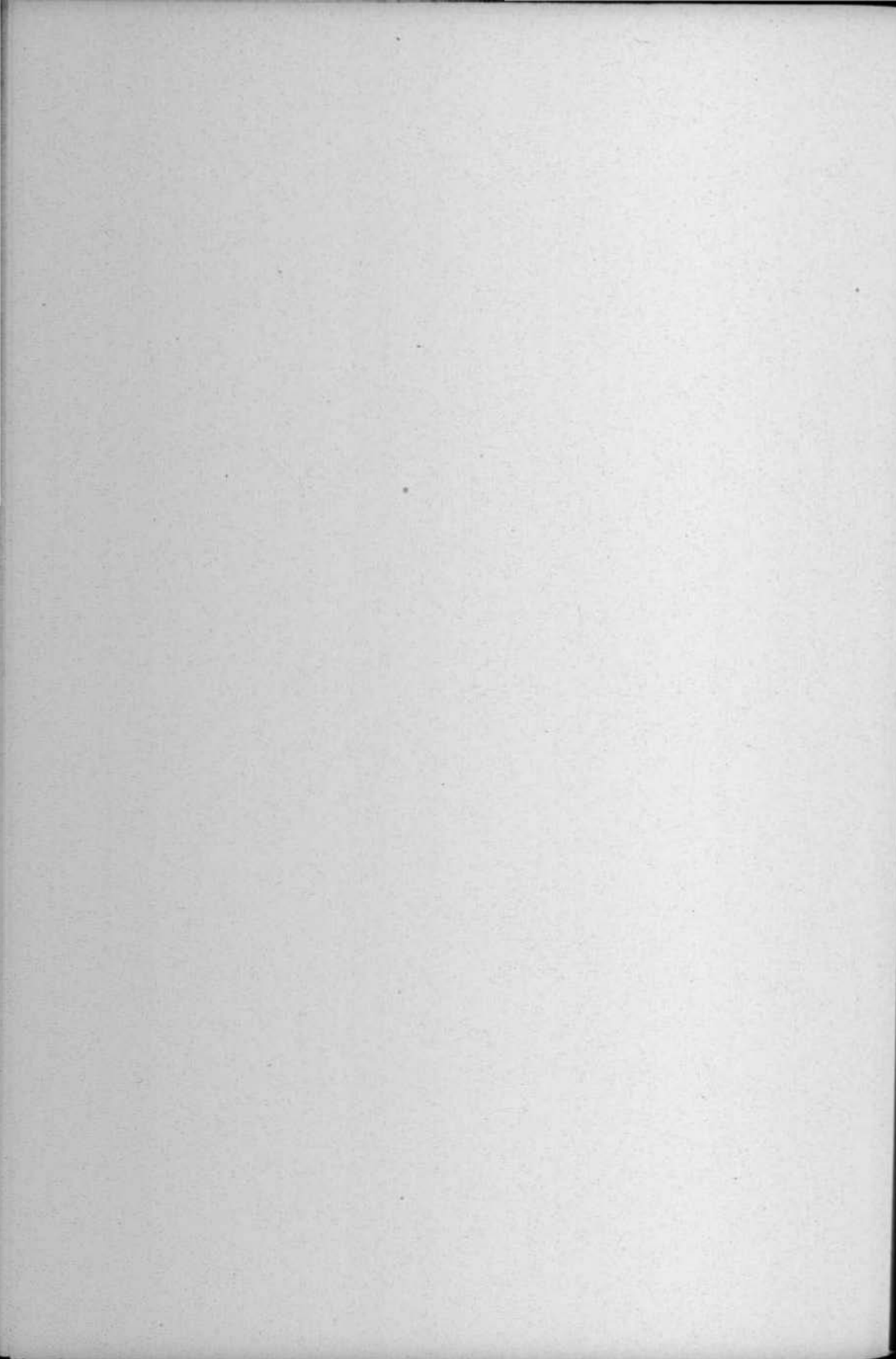
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Opinions



PART II



PREFACE

Part II of this report contains copies of certain opinions rendered by me during the past two years. I reaffirm these published opinions which shall be considered as superseding prior opinions given by me upon the subjects contained therein. I have rendered a great many opinions during the past two years that are not included in this report. I have sought to eliminate all opinions of a purely local nature or application, as well as other opinions that for one reason or another will be of no future service.

The arrangement of the opinions in this report is by subjects as was the arrangement of the past preceding report of this office, which is a radical departure from the arrangement of former reports. This change is a result of my efforts to improve the usefulness of the book to those who refer to it frequently, as well as the casual user. This new arrangement inaugurated in the preceding biennial report has received general commendation of the many users of the book of whom inquiry has been made.

In line with the last preceding biennial report of this office I have continued the new feature therein inaugurated of listing a Table of Statutes and Constitutional provisions cited or referred to in the opinions. This Table serves to make the Index much more useful and frequently saves much time in searching for the construction of a particular statute.

CARY D. LANDIS,

Attorney General of Florida.

Tallahassee, Florida,
January First, A. D.
Nineteen Hundred Thirty-seven.

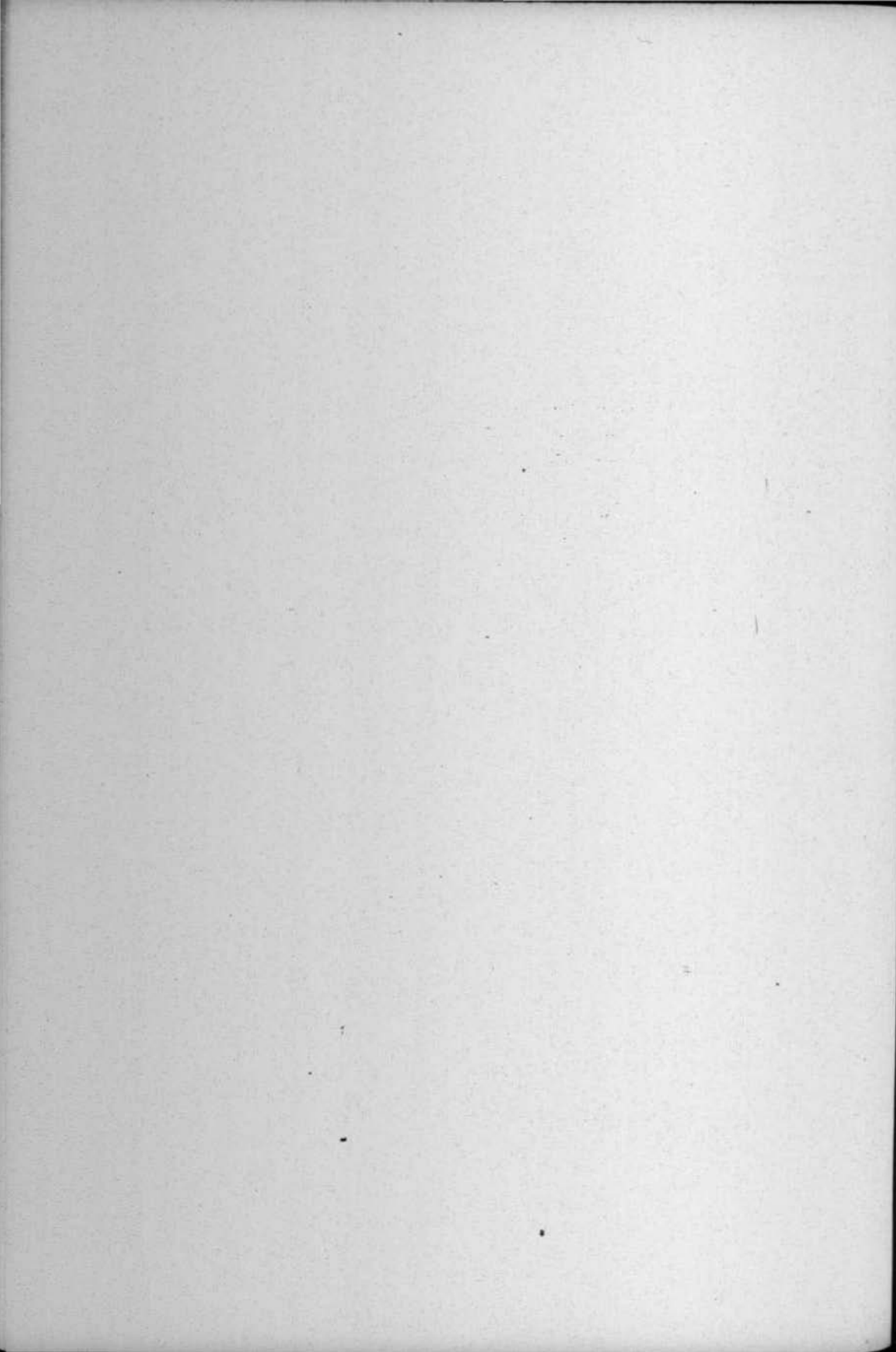


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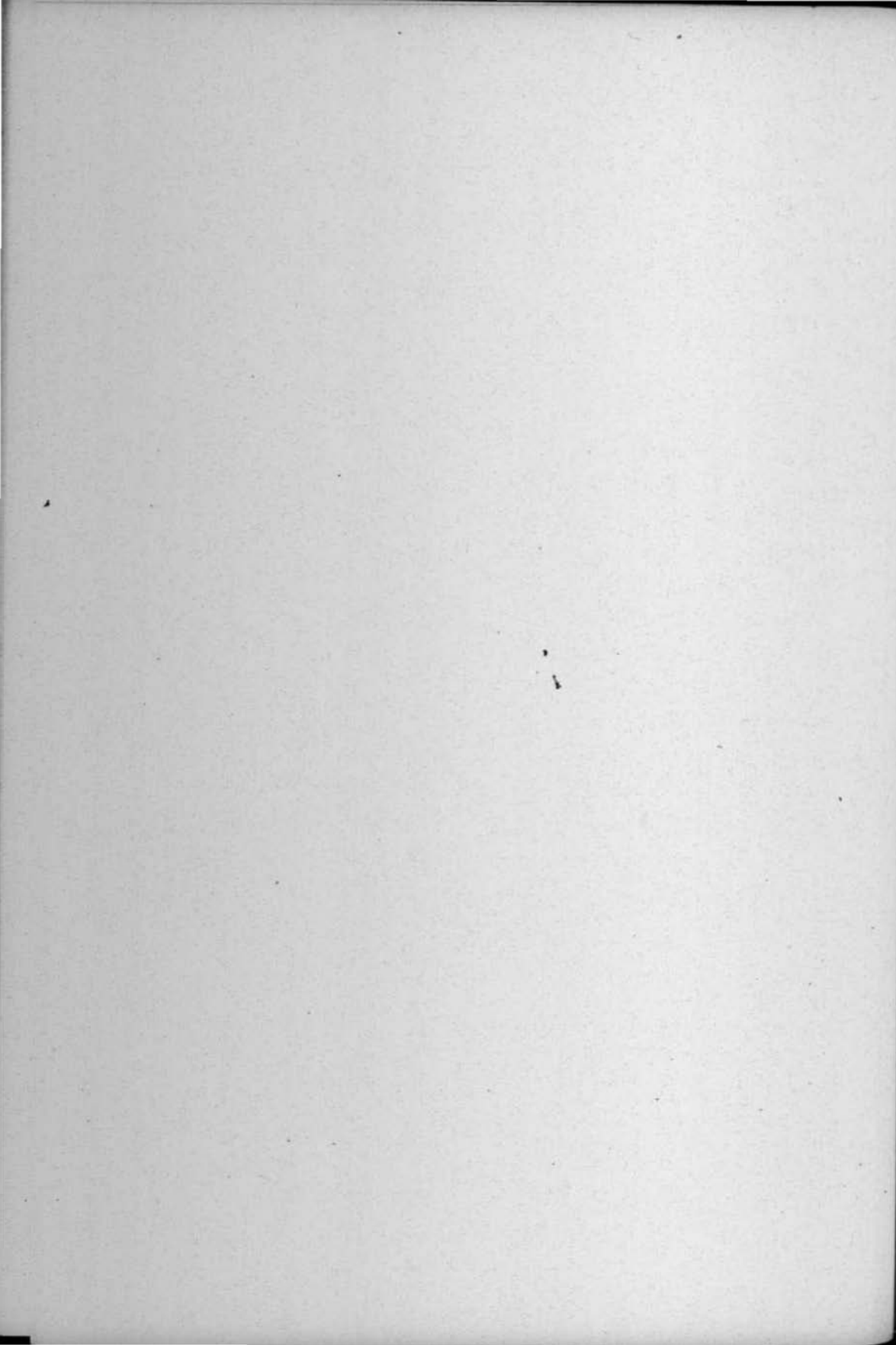
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SECTION 1

LICENSE TAXES

April 5, 1935.

NO LICENSE REQUIRED OF PERSON WHO OPERATES A
DENTAL LABORATORY*Dear Sir:*

I have your letter in which you request my opinion as to whether or not a person operating a dental laboratory is required to obtain a State and County Occupational license.

Since there is no provision in the Florida statutes which requires the operator of a dental laboratory to obtain a State and County Occupational license, it is my opinion that no State and County Occupational license is required.

August 2, 1935.

LICENSE PORTABLE STORES

Dear Sir:

In your letter of April 17, 1935, you state that a case has come to your attention in which a merchant operating a regular store on which he has secured a store license, has fitted up a truck as a portable store therefrom, and sells merchandise from house to house through the country districts.

You ask whether the store license on his permanent place of business is sufficient for the sale from the truck also, or whether it is necessary that license provided by Chapter 14491 be secured for the portable store in addition.

It is my opinion that the so-called portable store is not taxable under Chapter 14491 in addition to the tax paid on the store from which it sells and delivers. However, I call your attention to paragraphs (g) and (h) of Section 2 of Senate Bill No. 724, Chapter 16848, Acts of 1935, which would probably constitute the so-called portable store a unit in a chain, and make it subject to the tax therein imposed.

July 8, 1935.

TAXATION—LICENSES—CONTRACTORS—SENATE BILL NO. 954,
CHAPTER 17178 OF 1935*Dear Sir:*

I am in receipt of your letter of the 3rd instant, making inquiry with reference to Senate Bill No. 954, Laws of Florida, Acts of 1935, Section 1 of which reads as follows:

LICENSE TAXES

"Every person, firm or corporation who, for a fixed price, commission, fee or wage, offers or bids to construct within the State of Florida any public building, highway, street, sidewalk, bridge, culvert, sewer or water system, drainage or dredging system, electric or steam railway, reservoir or dam, hydraulic or power plant, transmission line, tower, dock, wharf, excavation, grading or other improvement or structure, or any part thereof, the cost of which exceeds the sum of Fifty Thousand Dollars (\$50,000), shall apply for and obtain from the Comptroller an annual State-wide license and shall pay for such license a tax of one thousand dollars (\$1,000) prior to offering or submitting any bid on any of the above enumerated projects."

You make inquiry if under the provisions of said Act a contract let in an amount of \$50,000.00 or more should be broken up and sublet to sub-contractors in an amount or amounts less than \$50,000.00 would the sub-contractor be required to pay a license fee or tax under said Act.

The inquiry contained in the letter attached to your communication is whether the Act is broad enough to include sub-contractors who bid on projects the cost of which exceeds the sum of \$50,000.00, even though the sub-contractor's bid is less than \$50,000.00.

Under a ruling of our Courts taxation statutes are required to be strictly construed. In the case of *State ex rel. Packard vs. Cook*, 108 Fla. 157, 146 So. 223, we find this language:

"The well-established rule is that, where there is an ambiguity in the language of a statute imposing a tax, and that ambiguity raises a doubt as to the legislative intent, the persons upon whom it is sought to impose the burden are to be given the benefit of the doubt, because a tax, to be sustained in any given case, must come clearly within the letter of the statute. *Edwards, Internal Revenue Collector, v. Wabash Ry. Co.* (C.C.A.) 264 F. 610; 33 C.J. 285; 25 R.C.L. 1092. See, also, *State v. Beardsley*, 84 Fla. 109, 94 So. 660."

In my view the above mentioned Act does not show any clear intent that the license should apply to sub-contractors and in my opinion sub-contractors are not required to pay such license, even though the bid of the sub-contractor should be \$50,000.00 or more.

Another inquiry before me with reference to said Act is as follows:

"If a bid is called for on a portion of a project, and the portion upon which bids are to be received is less than \$50,000.00 but the project is greater than \$50,000.00 is a contractor bidding on the portion of the project, the amount of whose bid is less than \$50,000.00, required to have the license."

LICENSE TAXES

Said inquiry, in my opinion, should be answered in the negative. In my view the license requirement applies if the bid is \$50,000.00 or more, and does not apply when the bid is less than \$50,000.00, whether such bid is placed on the entire general project or only on a part of such general project.

October 30, 1935.

OPTOMETRY—PRACTICE WITHOUT LICENSE

Dear Sir:

I am in receipt of your letter of the 25th instant with reference to the practice of optometry without a license and the employment of subjective methods of examination in the sale of glasses by those who are not licensed to practice optometry.

In reply your attention is called to Section 1 of Chapter 14,778, Laws of Florida, Acts of 1931, defining the practice of optometry, as follows:

"That the practice of Optometry, for the purpose of this Act, is hereby defined as follows, viz: to be the employment of any objective or *subjective* means or methods without drugs or surgery for the purpose of determining the refractive powers of the human eyes, or any visual or muscular anomalies of the human eye and its appendages, and the prescribing and the employment of lenses, prisms, ocular exercises for the correction, remedy, or relief of any insufficiencies or abnormal conditions of the same; and an Optometrist is one who practices Optometry in accordance with the provisions of this Act."

Your attention is also called to Section 8 of said Act making it unlawful for any one to practice optometry in this State without first procuring a certificate of registration or license as a registered optometrist.

Your attention is also called to Section 17 providing a penalty for any one holding himself out to the public as a practitioner of optometry or "*who shall engage in the practice of optometry*" without first complying with the provisions of said Act.

Under Section 1 of Chapter 14,778, above quoted, you will note that *subjective* as well as objective methods of examination are included in the definition of the practice of optometry. It would, therefore, appear that the employment of *subjective*, as well as objective, methods of examination in the sale of eye glasses are unlawful unless a person first secures a certificate of registration or license as a registered optometrist. This applies to stores or individuals.

LICENSE TAXES

October 30, 1935.

OCCUPATIONAL TAX SOUTHERN BELL TELEPHONE AND
TELEGRAPH COMPANY*Dear Sir:*

Replying to your letter of the 24th instant, requesting an opinion on the subject, it is my opinion that the Southern Bell Telephone and Telegraph Company has the right to pay its State occupational license tax to you, and that it would be your duty to receive same and issue a State license therefor. This, I think, is clearly provided for by Sections 1050, 1054, and 1274 respectively, of the Compiled General Laws of Florida, 1927.

It is not so clear as to the right of the Company to pay its county license taxes to you for all the counties in which it operates, but the Sections of the statute referred to seem to contemplate that this may be done.

Section 1050 provides that no person, firm, or corporation shall engage in or manage any business, profession, or occupation mentioned in this Chapter, unless a State license or a State and County license or a county license, as the case may be, shall have been procured from the tax collector of the county where the place of business may be located, or where the profession or occupation may be engaged in, or from the Comptroller or State Treasurer, as is provided for by this Chapter, or any other law of this State, etc., the last sentence of Section 1274 provides:

"If the payment of a license tax is made to the State Treasurer or Comptroller, the license shall be issued by the officer to whom the payment must be made."

These quoted portions of Sections 1050 and 1274 seem at variance with Section 1054, which provides that all State license taxes shall be paid to the Tax Collector or to the Comptroller, or to the State Treasurer as provided by law, and the County license taxes shall be paid to the county tax collector in each county in which any business, profession, or occupation shall be engaged in, managed, or transacted, unless otherwise provided in this Chapter.

It seems to me that reading all these provisions together, it was probably the legislative intent to allow persons, firms, or corporations operating in many counties to make one payment and receive a license therefor, covering the State and all counties in which such operations are carried on as a matter of convenience to the taxpayer.

LICENSE TAXES

December 5, 1935.

PERSON OPERATING BEAUTY PARLOR MUST PAY OCCUPATIONAL LICENSE TAXES AND FEES UNDER CHAPTER 16,800, ACTS OF 1935.
PERSON OPERATING DRY CLEANING ESTABLISHMENT MUST PAY OCCUPATIONAL LICENSE TAXES AND FEES REQUIRED UNDER CHAPTER 16,979, ACTS OF 1935.

Dear Sir:

I have your letter in which you request my opinion upon the following questions:

FIRST

Is a person who operates a beauty parlor and who pays the fees set forth in Chapter 16,800, Laws of Florida, Acts of 1935, required to pay the State and County occupational license taxes prescribed by other laws?

SECOND

Is a person who operates as a dry cleaner and who pays the fees set forth in Chapter 16,979, Laws of Florida, Acts of 1935, required to pay the State and County occupational license taxes prescribed by other laws?

The amounts required to be paid under Chapter 16,800, *supra*, are in the nature of *fees* and are charged as a part of the schemes of the State to regulate the practice and teaching of beauty culture. The proceeds of the *fees* are appropriated for the purpose of paying the necessary and proper expenses in carrying out the provisions of the Act. See Section 23. The occupational license taxes charged by the State and County for operating a beauty parlor are not for the purpose of regulation but are primarily for the purpose of raising revenue.

It is my opinion that a person who operates a beauty parlor and who pays the fees set forth under Chapter 16,800, *supra*, is required to pay the State and County occupational license taxes prescribed by other laws.

The amounts required to be paid under Chapter 16,979, *supra*, are in the nature of *fees* and are charged as a part of the State's scheme to regulate the business of dry cleaning, dyeing and pressing. The proceeds of the *fees* are appropriated for the purpose of paying the necessary and proper expenses in carrying out the provisions of the Act. See Section 13. The occupational license taxes charged by the State and County for operating a dry cleaning establishment are not for the purpose of regulation but are primarily for the purpose of raising revenue.

It is my opinion that a person who operates a dry cleaning establishment and who pays the fees set forth in Chapter 16,979, *supra*, is required to pay the State and County occupational license taxes prescribed by other laws.

LICENSE TAXES

December 6, 1935.

METHOD OF DETERMINING AMOUNT OF STATE OCCUPATIONAL
LICENSE TAXES REQUIRED OF TELEPHONE COMPANIES
OPERATING IN SEVERAL COUNTIES*Dear Sir:*

I have your request for my opinion upon the following question, to-wit:

In determining the amount of *State* occupational license taxes of a telephone company which operates in several Counties of the State, should Section 1260, Compiled General Laws of Florida, 1927, be applied to the number of telephones operated in the *State* by the company or should this Section of the statute be applied to the number of telephones in each *County* and the amount of the *State* occupational license taxes on the company figured by Counties be added together to arrive at the total amount of the *State* occupational license taxes?

On October 30, 1935, I gave you an opinion on this subject which reads in part as follows:

"It seems to me that reading all these provisions together, it was probably the legislative intent to allow persons, firms, or corporations operating in many counties to make one payment and receive a license therefor, covering the State and all counties in which such operations are carried on as a matter of convenience to the taxpayer."

I have reviewed the subject and it is my opinion that in determining the amount of State occupational license taxes of a telephone company which operates in several Counties of the State, Section 1260, *supra*, should be applied to *all* of the telephones operated in the State by the company without any reference to the number of telephones operated in each County. To state the matter another way: The *State* occupational license taxes should be determined on a State unit basis instead of on a County unit basis.

March 17, 1936.

**"OPERATOR" UNDER CHAPTER 17257, ACTS OF 1935, MUST PAY
GENERAL OCCUPATIONAL LICENSE TAX AND A LICENSE
TAX ON EACH MACHINE***Dear Sir:*

On November 31, 1935, I gave you an opinion as follows:

**"OPERATOR" UNDER CHAPTER 17257, ACTS OF 1935, NOT
REQUIRED TO PAY A LICENSE TAX ON EACH MACHINE**

Dear Sir:

I have your letter of November 20th, in which you request my opinion upon the question of whether or not an 'operator' as defined by Chapter

LICENSE TAXES

17257, Laws of Florida, Acts of 1935, is required to pay a license tax on *each* machine operated by a 'location operator' who obtains his machine from the 'operator'.

Section 5 of Chapter 17257, *supra*, fixes the amount of occupational license taxes to be paid by an 'operator' as follows: State, \$150.00; County, \$75.00; City or incorporated town, \$75.00. The 'location operator' is required to pay his license tax on *each* machine, which tax must be paid without regard to any tax levied upon the 'operator'.

There seems to be a conflict between Section 5 and Section 12 of the Act as to whether the 'operator' is required to pay an occupational license tax on *each* machine. The statute is, to say the least, not clear on this matter, and there is grave doubt as to the legislative intent. In such cases 'the persons upon whom it is sought to impose the burden are to be given the benefit of the doubt, because a tax, to be sustained in any given case, must come clearly within the letter of the statute.' State *ex rel. Packard vs. Cook*, 108 Fla. 157, 146 So. 223.

It is my opinion that the 'operator' is not required to pay an occupational license tax upon *each* machine, his liability being restricted to the payment of \$150.00 to the State, \$75.00 to the county, and \$75.00 to the city, while a 'location operator' is required to pay an occupational license tax on *each* machine in the amounts set out in Section 5 of the Act.

Since writing the foregoing opinion, the Supreme Court of Florida in the case of State of Florida *ex rel. Cleve Baker*, Plaintiff in Error, vs. William J. McCarthy, Acting Chief of Police of the City of Miami, Florida, Defendant in Error, Opinion filed February 1, 1936, and Petition for Rehearing denied on March 12, 1936, in determining the amount of the tax on coin-operated devices, decided that Section 5 of Chapter 17257, *supra*,

"requires of each 'operator' of such machine to pay to the Tax Collector an occupational tax of \$150.00 to the State and Seventy Five Dollars to the County and \$75.00 to the City or incorporated town, and in addition thereto to pay the occupational tax set forth in this section. That occupational State tax set forth is on automatic vendors \$30.00; skill machines \$10.00; Trade machines \$10.00 and Other machines \$500.00, and to pay to the Tax Collector for the County on automatic vendors \$15.00; skill machines \$5.00; trade machines \$5.00, and other machines \$250.00; and to pay a city license tax to the City or incorporated town on each machine, automatic vendors \$15.00, skill machines \$5.00, trade machine \$5.00 and other machines \$250.00. And it requires that each 'location operator' as defined in section 3 of the Act shall pay a like occupational license tax on each machine for the State, the County and the Municipality."

In view of the decision of the Supreme Court, you will please consider my opinion of November 31, 1935, as no longer effective, and

LICENSE TAXES

you will follow the above quoted part of the Supreme Court opinion in administering the law.

March 23, 1936.

LICENSES—WORLD WAR VETERANS

Dear Sir:

I have your letter of the 16th instant enclosing application for license for the manufacture of frozen desserts, together with his affidavit as to being a World War Veteran and his disability to which is attached a certificate by a doctor as to his incapacity. You make inquiry if the applicant has made proper showing as a disabled veteran for exemption from the license fee.

In reply your attention is called to Section 1269, Compiled General Laws of Florida, 1927, originally passed in Chapter 12,110, Acts of 1927, amended by Chapter 13,876 of 1929, Chapter 16,299 of 1933 and Chapter 17,476 of 1935. This last mentioned Act of 1935 is the statute which controls in such cases. By reference to said statutes you will note that the applicant has not complied therewith to show that he is entitled to the exemption. His only showing is an affidavit by himself and a certificate by a doctor, which is not authenticated. His affidavit should be supported by affidavits of other persons and all of the requirements of the statute should be complied with. You will note there is no showing that he is a permanent resident elector of Dade County nor that the service is to be carried on mainly through the personal efforts of applicant as a means of livelihood. Neither is there any certificate of government rated disability to the extent of 10% or more, or the affidavit of a reputable physician who personally knows the applicant. I would suggest if this applicant desires the exemption, under the above mentioned statute, a complete showing of the requirements of said statute should be made in the form of affidavits covering every necessary requirement mentioned in the statute.

Marsh 28th., 1936.

TAXATION—PEDDLER'S LICENSE—CRIPPLES OR INVALIDS

Dear Sir:

Replying to your favor of March 25th., in which you ask to be advised whether or not a person who is physically disabled may peddle certain merchandise without being required to pay an occupational license tax, permit me to say Chapter 15040, Laws of Florida, Acts of 1931, provides that all confirmed cripples or invalids physically incapable of performing manual labor, who have been residents of the State of Florida for a period of at least one year, shall be allowed to peddle without paying a license, where the person is using their own capital

LICENSE TAXES

only. The Statute further provides that such exemption shall be allowed only upon the certificate of the County or other reputable physician of the disability; and also, that the exemption shall not apply to the sale of spiritous, vinous or malt liquors, lightning rods and cigarettes.

July 8, 1936.

TAXATION—FURNITURE DEALERS—OCCUPATIONAL LICENSE—
WHEN MERCHANTS AND SUBJECT TO CHAIN STORE TAX

Dear Sir:

Receipt is acknowledged of your letter of June 22nd, requesting my opinion upon the question of whether or not a retail furniture dealer is required to pay the license tax imposed by Section 1149, Compiled General Laws of Florida, 1927, and the license tax imposed by Chapter 16,848, Laws of Florida, Acts of 1935, generally referred to as the 1935 Chain Store Tax Law.

Section 1149, *supra*, applies to *all* furniture dealers whether they are wholesale or retail. This Section reads as follows:

"1149. (893.) Furniture dealers. Dealers in furniture, with a capital of seventy-five thousand dollars or more, shall pay a license tax of fifty dollars; with a capital less than seventy-five thousand and not less than fifty thousand dollars, shall pay a license tax of thirty-five dollars.

With a capital less than fifty thousand and not less than twenty-five thousand dollars, shall pay a license tax of twenty dollars, and with a capital less than twenty-five thousand dollars, shall pay a license tax of ten dollars; Provided, that this does not apply to persons paying a merchant's license. (Id.)."

The purpose of this Section was to distinguish between a person, firm or corporation which operated a retail store for the exclusive sale of furniture and one which operated a retail store and among other things sold furniture, and to require a different occupational license tax to be paid by each class.

Chapter 16,848, *supra*, brings retail furniture dealers and one who operates a retail store and among other things sells furniture into the same class, thus permitting the operation of the proviso in Section 1149, *supra*, whereby retail furniture dealers come under the classification of merchants and thereby relieve them from paying the tax imposed exclusively upon furniture dealers by that Section. It is my opinion that retail furniture dealers do operate stores under the terms of Chapter 16,848, *supra*, and are, therefore, not subject to the tax imposed by Section 1149, *supra*.

LICENSE TAXES

Section 17 of Chapter 16,848, *supra*, reads as follows:

"OTHER LICENSES. The tax imposed by this Act shall not repeal any other license tax, occupational tax, excise tax, or tax levied by law as a condition precedent to engaging in business in the State of Florida, unless expressly repealed hereby."

Chapter 16,848, *supra*, does not repeal Section 1149, *supra*, but it does permit the operation of the proviso contained therein so that retail furniture dealers pass from the class created by this Section into the class of one paying a merchant's license under the proviso.

The question of whether or not Chapter 16,848, *supra*, applies only to merchants is not considered in this opinion.

This opinion is not in conflict with my opinion of April 28, A. D. 1936, in which I said that Chapter 16,848, *supra*, did not repeal Section 1149, *supra*. This Section continues to apply to wholesale furniture dealers. Chapter 16,848, *supra*, in effect reclassified retail furniture dealers and the proviso in Section 1149, *supra*, thereupon operated to relieve them of the tax imposed by that Section.

June 22, 1936.

TAXATION—OCCUPATIONAL LICENSES—BOOT AND SHOE
REPAIR SHOPS—MACHINE SHOPS

Dear Sir:

This is in reply to your request for my opinion concerning the proper construction of Section 1279 (18) and 1279 (52) of the 1934 Supplement to the Compiled General Laws of 1927.

Section 1279 (18) reads as follows:

"Boot and shoe repair shops.—Boot and shoe repair shops employing two hands shall pay a license tax of five dollars; for each additional hand employed shall pay two dollars and fifty cents."

Section 1279 (32) reads as follows:

"Machine shops; repair shops.—Each person, firm or corporation operating a machine shop for public use, shall pay a license tax as follows: Employing two men and not more than five, fifteen dollars; employing five men and not more than fifteen, twenty-five dollars; employing fifteen men and not more than thirty-five, thirty-five dollars; employing thirty-five men and more, fifty dollars."

It is my opinion that the above provisions are limited in their application to the classifications therein defined. These provisions would

LICENSE TAXES

therefore not apply when less than two hands are employed and where no hands at all are employed and the work done entirely by the owner and operator of the shop.

August 31, 1936.

OCCUPATIONAL LICENSE TAXES—ENFORCEMENT OF PAYMENT—
AUTHORITY OF COMPTROLLER TO EMPLOY PERSONS TO
MAKE INSPECTIONS AND ASSIST IN COLLECTIONS

Dear Sir:

This is in reply to your letter of August 24, in which you request my opinion as to the duties of officers in connection with enforcing the payment of license taxes.

The following are some of the statutory provisions prescribing the duties of various officers:

(Section 1279(92) Compiled General Laws of Florida, 1934 Supplement: "Enforcement of license taxes. Report of violation of law.—The payment of all license taxes shall be enforced by the seizure and sale of the property by the tax collector, or in case of State license taxes payable either to the State Treasurer or Comptroller, by the State Treasurer or Comptroller, as the case may be, and it is hereby made the duty of the tax collector and county judge to report to the Comptroller and State's attorney any violation of this law. (Ch. 14491, Acts 1929, Extra. Sess., § 23.)"

(Section 1279(93) Compiled General Laws of Florida, 1934 Supplement: "Comptroller or State Treasurer may issue warrant to collect license taxes.—Whenever it shall be necessary for the Comptroller or State Treasurer to enforce the payment of any license taxes to either of said officials, they are hereby authorized and empowered to issue a warrant directing the sheriff of any county to collect the same by levy and sale, and any such warrant shall have the same force and effect as an execution from the clerk of the circuit court, and the sheriff shall receive the same fees as provided by law in the case of executions from the clerk of the circuit court. (Ch. 14491, Acts 1929, Extra. Sess., § 24.)"

(Section 1279(96) Compiled General Laws of Florida, 1934 Supplement: "County judge to report to grand jury or prosecuting officer names of persons that have not procured license; Comptroller to furnish blanks.—The county judge shall report to the grand jury each term of court, or the clerk of the circuit court when no grand jury is ordered, or to the proper prosecuting officer in their respective counties, which shall be filed in said clerk's office, the names of all persons that have procured

LICENSE TAXES

licenses under the provisions of this law. The Comptroller of the State of Florida shall furnish such blanks as are required in book form to the county judge of each county, who shall receive his receipt therefor, stating the number of blank licenses in each book received, and the county judge shall return such books for examination at any time when requested to do so by the Comptroller. (Ch. 14491, Acts 1929, Extra. Sess., § 27.)"

You also inquire whether you have the authority to employ men to make inspections and to assist in the collection of occupational taxes. It is my opinion that Section 1279(105), Compiled General Laws of Florida, 1934 Supplement, gives you this authority by reason of the provisions expressly authorizing "the deduction of all costs of administration of this, law, including clerical aid, postage, costs and expenses of collection, investigations, and litigation".

November 1, 1935.

SURETY COMPANIES—REVOCATION OF LICENSES FOR BRINGING SUITS IN U. S. COURTS

Dear Sir:

I am in receipt of your letter of the 29th ultimo making inquiry if this office has rendered any opinion on Section 6305, Compiled General Laws of Florida, 1927, relating to the license of a surety company being revoked if said company begins any suit in the United States Court as to any bond they are surety upon or removes any suit to a United States Court.

In reply I beg to say I do not find where any opinion on the said statute has been rendered by me as Attorney General but I find in the report of the Attorney General for 1927-1928, page 211, that Honorable Fred H. Davis, formerly Attorney General but now Justice of the Supreme Court, under date of August 16, 1928, rendered an opinion on said statute. I am making copy of said opinion and enclosing same herewith. Section 6305 was also Section 4342, Revised General Statutes of 1920. The opinion refers to Section 4341, Revised General Statutes but quotation is Section 4342 of said compilation. I assume that the error was made in printing.

May 18, 1936.

LICENSES, CONTRACTOR OF PUBLIC WORKS, CHAPTER 17178, ACTS OF 1935

Dear Sir:

Mr. Arthur A. Simpson, Attorney for your Department, has requested my opinion as to the tax imposed by Chapter 17178, Laws of Florida, Acts of 1935, and whether the license year is divisible.

LICENSE TAXES

Section 1053 of the Compiled General Laws of Florida, 1927, provides that the license year shall run from October 1st. The same section also provides for the issuance of a license after the first day of April, to expire October 1st, upon payment of one-half of the amount of the annual license.

These provisions were incorporated in Section 4 of Chapter 14491, Acts of 1929. It is my opinion, based upon what seems to be a legislatively established policy, that the license tax year under Chapter 17178 runs from October 1st to October 1st next succeeding, and that a fractional license may be issued after April 1st of any year to expire October 1st next thereafter.

November 8, 1935.

LICENSES, CONTRACTOR OF PUBLIC WORKS

Dear Sir:

This is in answer to a communication which I have had from Architects and Engineers, Atlanta, Georgia, by said letter being addressed to the Board of Commissioners of State Institutions.

The question raised in this letter is whether or not in the building program at the State Institutions, where the Federal Government supplies a portion of the money and retains control over the letting of the contracts and over the expenditure of the money, both State and Federal, and over the entire construction until it is completed, Senate Bill No. 954, Chapter 17178, enacted into law by the 1935 session of the Legislature, wherein it is required, before any bidder can bid on a building or public work, a license tax of one thousand dollars be paid to the State Comptroller, is applicable.

It is my opinion that under the circumstances above mentioned, wherein these bids and contracts must be submitted to the Federal Government for final acceptance and approval, Senate Bill No. 954 does not cover such contracts; and that under the Federal Constitution, the State cannot require a license tax, in the nature of a privilege tax, for the privilege of doing business which is under the final control of the Federal Government.

August 15, 1935.

**LICENSES, APPLICATION CONTRACTORS BIDDING FOR
HIGHWAY CONSTRUCTION**

Dear Sir:

This refers to communication from the Honorable Arthur A. Simpson, Attorney for your Department, under date of August fifteenth, requesting an opinion from this office as to whether or not Senate Bill No. 954, Chapter 17178, enacted into law by the 1935 Session of our

LICENSE TAXES

Legislature is enforceable with reference to contracts which cover expenditure of both State and Federal funds, or Federal funds only, and which contracts must be submitted to the State Road Department and also to the Bureau of Public Roads at Washington, which is a Federal agency, for its final approval for the use of Federal funds.

As I understand the procedure, where the Federal Government appropriates money to the State, then, in the submission of the bids for contracts to cover this expenditure, the bids must be submitted to the Bureau of Public Roads for final acceptance before the contracts can be awarded for the work.

It is my opinion that, inasmuch as these bids and contracts must be submitted to the Bureau of Public Roads in Washington for final acceptance and approval, Senate Bill No. 954 does not cover such contracts. In other words, it is my opinion that the Legislature of the State of Florida did not have in mind, and further under the Federal Constitution could not make a requirement of a license tax in the nature of a privilege tax to be paid for the privilege of doing business, which is under the final control of the Federal Government.

As to all contracts of all kinds and nature, wherein the Federal Government does not have the final approval of the contracts, and where they need not be submitted to the Federal Government for approval, then this tax is applicable and all persons filing or offering bids to the State Road Department of Florida for acceptance and approval must comply with this tax requirement.

March 8, 1935.

TAXATION, LICENSES, SHOWS

Dear Sir:

Replying to your letter of the 7th. instant, I beg to advise that license taxes under Section 1244 of the Compiled General Laws of Florida, 1927, should be computed on the basis of the population of the city or town in or adjacent to which the tent or structure is placed or erected.

The question of population is one of fact, the practical and usual method of determining which is by use of the last State or Federal census, although it is not so provided in the Act referred to.

February 26, 1935.

TAXATION, LICENSE, SALE OF FARM PRODUCTS

Dear Sir:

This will acknowledge receipt of your letter of February 21st, with which you submit papers left with you by _____ of Doerun,

LICENSE TAXES

Georgia, who states that he was forced to pay a City license in Lakeland for selling produce grown on his own farm. You ask my opinion in the matter.

Section 3 of Chapter 13874, Acts of 1929, reads as follows:

"That all persons and corporations offering for sale farm or grove products grown in any State other than Florida and products manufactured therefrom shall be exempt from all forms of license tax, State, County and Municipal, when the same is being offered for sale or sold by the person or corporation producing the said products, and when the State where the farm or grove product offered for sale is grown gives and affords to Florida farm and grove produce sellers or peddlers this same exemption as to license tax."

We are advised that the State of Georgia has a reciprocal statute. Therefore, a Georgia producer of farm or grove products, where he offers for sale in this State only such grove or farm products as he produces on his farm or grove, is exempt from payment of State, County, and Municipal license tax.

July 6th., 1935.

TAXATION, LICENSES, POOL TABLES

Dear Sir:

Replying to your favor of July 3rd., permit me to say that it is my opinion that Section 7435 of the Compiled General Laws of 1927 provides the penalty for doing business without license where no other penalty is expressly provided.

I am enclosing copy of Senate Bill No. 585, Chapter 17167, Acts of 1935, which reduces the license tax on pool tables, etc., but inasmuch as the reduced tax is not effective until October first I do not think this Act would affect the jurisdiction of your Court at this time.

March 2, 1935.

TAXATION—LICENSES—CHARGED WATER

Dear Sir:

I am in receipt of your letter of the 21st ultimo, requesting a copy of the laws of this State imposing a tax upon charged water.

In reply I beg to say that the only statute relating to the subject of your inquiry is Section 1272 (25), Compiled General Laws of Florida, 1934, relative to carbonated beverages and reading as follows:

LICENSE TAXES

"Wholesale dealers in, other than bottlers operating plants in this State who are otherwise licensed, near beer, ginger ale, carbonated waters or other beverages, carbonated or otherwise, shall pay a license tax of twenty-five dollars."

January 19, 1935.

INTERSTATE COMMERCE—PEDDLERS

Dear Sir:

I have your letter of the 28th ultimo the first paragraph of which reads as follows:

"Our salesmen handle our items, especially a tool to be used in garages, by carrying them with them, demonstrating them to the garage owner, and selling them. Delivering them from their car or truck as they go."

From your statement above, it appears that your salesmen would be engaged in peddling and your citation of *Stoutenburgh vs. Hennick*, 129 U. S. 141, 32 L.Ed. 637, would not apply.

I refer you to Section 1279 (60), Compiled General Laws of Florida, 1934 Supplement, reading as follows:

"Peddlers of medicine or other articles of like character shall pay a license tax of one hundred dollars for each county in which they peddle, fifty dollars of said amount to be paid to the county, said fifty dollars being the county license. Peddlers of merchandise other than medicine, who are otherwise licensed, and except peddlers of tinware, woodenware, stone or clay, hollowware, tanners, who manufacture leather goods, when traveling in vehicles, shall pay thirty-five dollars for each county in which they may peddle: Provided, that no peddler's license shall be required of Union Confederate Veterans of the Civil War, nor of persons totally blind, nor of persons who are physically disabled to do manual labor, who shall obtain a certificate from the county health officer as to such disability, nor shall this schedule be construed to require a license of peddlers of fish, oysters, fresh meats, fruits and all farm products raised by the seller."

I also refer you to Section 1279 (2) of the same compilation, which provides that in every case not otherwise provided in this law a County license tax of 50% of the State license tax is hereby levied and imposed upon any business, profession or occupation mentioned in this law.

Your attention is called to the case of *Wagner v. Covington*, 251 U. S. 95, 64 L.Ed. 157, the second headnote of which case reads as follows:

"A non-resident manufacturer of 'soft drinks' doing a business in a municipality in the state which largely consists in carrying a supply of such drinks from one retailer's place of business to another's upon the vehicle in which the goods were

LICENSE TAXES

brought across the state line, exposing them for sale, soliciting and negotiating sales, *and immediately delivering the goods sold* in the original unbroken cases, may be required to take out the license required of all wholesalers in soft drinks without infringing the commerce clause of the Federal Constitution."

I also quote you from the body of said opinion, as follows:

"From the facts recited it is evident that, in essence, that part of plaintiffs' business which is subjected to regulation is the business of itinerant vender or peddler,—a traveling from place to place within the state, selling goods that are carried about with the seller for the purpose. * * *"

"We have, then, a state tax upon the business of an itinerant vender of goods as carried on within the state,—a tax applicable alike to all such dealers, irrespective of where their goods are manufactured, and without discrimination against goods manufactured in other states. It is settled by repeated decisions of this court that a license regulation or tax of this nature, imposed by a state with respect to the making of such sales of goods within its borders, is not to be deemed a regulation of or direct burden upon interstate commerce, although enforced impartially with respect to goods manufactured without as well as within the state, and does not conflict with the 'commerce clause'. *Woodruff v. Parham*, 8 Wall. 123, 140, 19 L.Ed. 382, 387; *Rowe Mach. Co. v. Gage*, 100 U. S. 676, 25 L.Ed. 754; *Emert v. Missouri*, 156 U.S. 296, 39 L.Ed. 430, 5 Inters. Com. Rep. 68, 15 Sup. Ct. Rep. 367; *Baccus v. Louisiana*, 232 U.S. 334, 58 L.Ed. 627, 34 Sup. Ct. Rep. 439.

"The peddler's license tax considered in *Welton v. Missouri*, 91 U.S. 275, 23 L.Ed. 347, was denounced only because it amounted to a discrimination against the products of other states, and therefore to an interference with commerce among the states. to the same effect, *Walling v. Michigan*, 116 U.S. 446, 454, 29 L.Ed. 691, 693, 6 Sup. Ct. Rep. 454.

"Of course the transportation of plaintiffs' goods across the state line is of itself interstate commerce; but it is not this that is taxed by the city of Covington, nor is such commerce a part of the business that is taxed, or anything more than a preparation for it. So far as the itinerant vending is concerned, the goods might just as well have been manufactured within the state of Kentucky; to the extent that plaintiffs dispose of their goods in that kind of sales, they make them the subject of local commerce; and this being so, they can claim no immunity from local regulation, whether the goods remain in original packages or not."

In consideration of the above, it would appear that your salesmen, making sales and delivering goods at the time of sale as outlined in your letter, would be subject to the license tax required of peddlers.

LICENSE TAXES

October 7, 1936.

PUBLICATION BY COUNTY JUDGE OF OCCUPATIONAL LICENSES
UNDER CHAPTER 14,491, ACTS OF 1929, AND
SECTION 1275, C. G. L., 1927

Dear Sir:

I have your letter of October 6th, in which you inquire if it is necessary under Section 1275, Compiled General Laws of Florida, 1927, or Section 26 of Chapter 14,491, Acts of 1929, for the County Judge to publish a list of the licenses issued on coin-operated devices and on beverage licenses.

Coin-operated devices are licensed under the provisions of Chapter 17,257, Acts of 1935, which said Act makes no provision for the County Judge to publish a list of those securing licenses.

Chapter 16,774, Acts of 1935, provides for the regulating and taxing, the manufacturing, distribution and sale of beverages and for the creating and providing for a State Beverage Department but the said Act makes no provision for the publication by the County Judge of licenses issued under the Act.

Section 1275, Compiled General Laws of Florida, 1927, was originally adopted as Section 62 of Chapter 6421, Acts of 1913, which said Section provides as follows:

"Each County Judge shall transmit to the Comptroller on the first Monday of each month in each year a statement showing the amount of money received for State and County licenses under the provisions of *this Act*, and shall publish said list in some newspaper printed in said County by one insertion in each year *****."

Section 26 of Chapter 14,491, Acts of 1929, has the following provision:

"Each County Judge shall transmit to the Comptroller on the first Monday of each month in each year, a statement showing the amount of money received for State and County licenses *under the provisions of this Chapter*, and shall publish said list in some newspaper printed in said County by one insertion in each year, *****."

Section 26 of Chapter 14,491, Acts of 1929, and Section 62 of Chapter 6421, Acts of 1913 (Section 1275, Compiled General Laws, 1927) both allude to licenses issued under the provisions of the respective Acts.

It is, therefore, my opinion that since neither Chapter 17,257, Acts of 1935, nor Chapter 16,774, Acts of 1935, require the publication of licenses issued under the said Acts that it is not necessary for the County Judge to publish a list of the said licensse.

LICENSE TAXES

October 14, 1936.

TAXATION—LICENSES—BEAUTY CULTURE—MANICURISTS

Dear Sir:

I am in receipt of your letter of the 13th instant enclosing communication to you under date of the 6th instant from Hon. _____, Attorney for the State Board of Beauty Culture Examiners, making the following inquiry:

"Is a beautician, who finds it necessary in the regular course of her practice of beauty culture in a beauty shop to do a certain amount of manicuring for her customers, required by the statutes of this State to secure a manicurist's occupational license as a prerequisite to her right to do such manicuring, notwithstanding the fact that she is the holder of a regular license to practice beauty culture, and notwithstanding the further fact that manicuring, when done in a regular beauty shop, is declared by the Florida Beauty Culture Law to constitute the practice of beauty culture?"

In reply I beg to say in my opinion said inquiry should be answered in the negative.

October 29, 1936.

SECTION 1061, C. G. L. 1927—AUTOMOBILE TIRE & TUBE DEALERS

Dear Sir:

I have your letter of the 28th inst., in which you transmit a file from Honorable _____, Tax Collector of Duval County, in which he requests an opinion asking whether or not a person or firm selling second hand automobile tires and tubes taken from automobiles purchased for junk is subject to Section 1061, Compiled General Laws 1927, which requires a license for dealing in tires and tubes.

Mr. _____ in his letter includes a brief furnished by a certain automobile parts dealer citing cases holding that a person is not liable under a statute or ordinance authorizing a license tax to pursue a given occupation or business if he is not actually engaged in such occupation or business. It is contended in this brief that since used cars are bought only for obtaining various parts for resale after the cars are dismantled that the incidental sale in the store of the automobile parts dealer of tires so purchased does not constitute the dealer a tire and tube dealer within the purview of Section 1061, C. G. L. 1927. The brief cites the case of Texas Company versus Amos, 81 So. 471, in which case the Florida Supreme Court held that the Texas Oil Company was not subject to a tank car tax because it used, owned and controlled

LICENSE TAXES

the tank car in its own business and was not engaged in the business of owning and transporting tank cars.

I find no fault or criticism of the cases furnished in the brief but doubt the application of the cases so cited to the particular point in question.

Section 1061 imposes on every person, firm or corporation engaged in the automobile tire and tube business in the State of Florida a State license tax for each place of business. If the Act in question had stopped with the above section the contention of the automobile parts dealer would probably be correct but Section 6 of the same Act (Section 1066, C. G. L. 1927) contains the following: "Every person, firm or corporation who buys automobile tires and tubes or either for resale, or who is engaged in selling automobile tires and tubes or either, whether as a separate and independent business or in connection with any other business, is hereby declared to be an automobile tire and tube dealer."

It is, therefore, my opinion that since the Legislature has defined the Act who are automobile tire and tube dealers this definition would apply to any person or firm selling second hand automobile tires and tubes although taken from automobiles purchased for junk.

November 4, 1936.

SECTION 19 OF CHAPTER 14,491, LAWS OF FLORIDA, 1929; BEING
SECTION 1279 (88) C. G. L., 1927 PERMANENT SUPPLEMENT.
AND SECTION 37 OF CHAPTER 6421, LAWS OF FLORIDA,
1913; C. G. L. 1927 SECTION 1205. AND LICENSES ON
MUSIC BOXES

Dear Sir:

I acknowledge receipt of your letter in which you ask whether automatic music machines should be licensed under Section 1205, C. G. L. 1927 or Section 1279 (88), C. G. L. 1927 Permanent Supplement.

Section 1205, C. G. L. is a subsection of Section 37, Chapter 6421, Acts of 1913, which is as follows:

"Music Boxes. Owners or managers of, when operated for profit, shall pay a license tax of \$5.00 for each instrument."

Section 1279 (88) is Subsection (e) of Section 19 of Chapter 14,491, Acts of 1929, and provides as follows:

"Each person, firm or corporation who may operate or place, for public use any vending machine or mechanical device designed to operate by the insertion into such machine of a coin or metal disc or slug for the purpose of dispensing any merchandise, showing weight of persons or objects, producing

LICENSE TAXES

or reproducing music, musical sounds or noises———
shall pay a license tax of \$15.00."

Section 31 of Chapter 14,491, Acts of 1929, is as follows:

"That nothing herein provided shall be construed to repeal any license tax now imposed by law as this Act is intended to supplement the statute now in force."

It is my opinion that the Tax Collectors should require licenses under both Section 1205, C. G. L. 1927, and under Section 1279 (88) C. G. L., 1927, Permanent Supplement, since Chapter 14,491, Acts of 1929, by express provision of the Act provides that it shall not be construed to repeal any license tax now imposed and the Act is intended to supplement the statutes now in force.

December 2, 1936.

LICENSE AUTOMOBILE AGENCIES AND USED CAR DEALERS—
SECTIONS 1056 AND 1060, C. G. L. 1927

Dear Sir:

I have your letter of recent date in which you quote from a letter as follows from the Honorable ———, Tax Collector of Dade County:

"Open lots where used cars are exhibited for the purpose of making sales and some of the agents have a number of such places where cars are exhibited, and the consumation of such sales may or may not be at the principal place of business as claimed by the agencies.

The request this office is making is an interpretation on whether or not you construe each used lot to be a separate place of business and, therefore, subject to a license tax."

Section 1056 provides for a license on automobile agencies or persons engaged in the sale of automobiles and automobile trucks and further provides that they shall pay for each place of business a license tax according to the size of the city or town.

Section 1060 provides for a license on used car dealers. This Section further provides "such license when so issued shall entitle the licensee to carry on and conduct the business of buying and selling and dealing in used vehicles for a period of one year from the first of January of the current year *****. Any person conducting the business of buying, selling or dealing in used vehicles and having received a license therefor, shall, before removing any one or more of his places of business, or shall before opening any additional place of business, apply to the Comptroller for and obtain, a supplemental license, for which no fee shall be charged."

LICENSE TAXES

Section 1060 further provides that any manufacturer or selling agents may buy or take in trade and sell any used vehicle of his own make without such license. It will thus be seen from the wording of Section 1060 that the used car license is not necessary for one selling new cars unless he takes in trade used cars of other makes, in which event on the sale of these second hand cars he would have to take out a license under Section 1060.

Honorable Fred H. Davis while Attorney General of Florida, in an opinion written December 27, 1929, said: "The license law has been generally construed for many years as requiring a separate license for each place at which business is transacted whether on a large scale or on a small scale *****", and I see no occasion to render a different opinion.

It is, therefore, my opinion that if the automobile agencies licensed under Section 1056, C. G. L., have different lots where they sell their new cars, it is necessary for them to obtain a separate license for each place of business.

It is my opinion, however, that under Section 1060 it is not necessary for an additional license to be charged used car dealers, although under the same Act the dealers should apply to the Comptroller for a supplemental license for which no fee would be charged.

December 15, 1936.

THE EFFECT OF CHAPTER 16,848, ACTS OF 1935, ON THE PAYMENT
OF OTHER OCCUPATIONAL LICENSE TAXES BY VARIOUS
BUSINESSES

Dear Sir:

I have your letter of recent date in which you state that many of the Tax Collectors "seem to think that because of wording of said laws they would not be required to pay two license tax as mentioned under the following quoted sections and Chapter 16848, Acts of 1935."

I will not repeat the various sections mentioned in your letter as this opinion will apply to all such businesses. One of the sections mentioned in your letter, to-wit, Section 1120, states "dealers in cigars and tobacco, who pay no other license, shall pay a license of five dollars."

I am of the opinion that Chapter 16,848, Acts of 1935, was intended by the Legislature to be in addition as expressed in the Act itself, of every other tax then being paid by all parties who would come within the terms of the said Act. In the Liggett case recently decided by the Supreme Court the Court emphasized this feature of the Act.

LICENSE TAXES

While Section 1120 and other related sections state that "dealers who pay no other license shall pay a license of five dollars." The effect of this section is to apply a tax of five dollars to those dealers who at that time are paying no other tax. It is my opinion that under the all-inclusive provisions of Chapter 16,848, Acts of 1935, that the tax therein levied should be in addition to these various other occupational and license taxes and did not have the effect of relieving these concerns from the other tax they were then paying if Chapter 16,848 applied to them.

SECTION 2

DOCUMENTARY STAMP TAXES

July 24, 1935.

TRANSFER OF LEGAL TITLE TO SHARES OF STOCK BY
OPERATION OF LAW NOT SUBJECT TO DOCUMENTARY
STAMP TAX ACT*Dear Sir:*

I have your letter in which you request my opinion upon the following question:

Is the transfer of the legal title to shares of stock from a deceased person, who was domiciled in Florida at the time of his death and whose estate is being administered by a Florida Court, to his executor subject to the terms and provisions of Chapter 15,787, Laws of Florida, Acts of 1931, known as the Florida Documentary Stamp Tax Act?

Chapter 15,787, *supra*, is not broad enough to cover the transfer of the legal title to shares of stock made by operation of law. Since the transfer of the legal title to the shares of stock referred to in your question was made by operation of law, it is my opinion that the transfer is not subject to the terms and provisions of Chapter 15,787, *supra*. This is in harmony with the regulation issued by the United States Treasury Department, Bureau of Internal Revenue, in the administration of the Federal Documentary Stamp Tax Act. (See Paragraph (g) of Article 35 of Regulation 71, revised July, 1932, relating to Stamp Taxes).

This opinion supersedes my opinion of May 3, A. D. 1933, which appears on Page 49 of the Biennial Report of the Attorney General for 1933-1934, in so far as there may be a conflict between the two opinions.

July 24, 1935.

BONDS OF CORPORATION ISSUED, DELIVERED, SOLD, TRANS-
FERRED OR ASSIGNED OUTSIDE OF FLORIDA AND SECURED
BY MORTGAGE ON LANDS IN FLORIDA AND OTHER STATES
NOT SUBJECT TO DOCUMENTARY STAMP TAX ACT*Dear Sir:*

I have your letter of July 22nd, in which you request my opinion on the following question:

Are bonds issued, delivered, sold, transferred or assigned outside of the State of Florida by a corporation and secured by a mortgage on

DOCUMENTARY STAMP TAXES

lands located in Florida and in other States, subject to the terms and provisions of Chapter 15,787, Laws of Florida, Acts of 1931, known as the Florida Documentary Stamp Tax Act?

Paragraph 1 of Schedule A of Chapter 15,767, *supra*, is only applicable to "bonds * * *" issued in Florida. Paragraph 4 of Schedule A of Chapter 15,787, *supra*, is only applicable to "promissory notes * * * made, executed, delivered, sold, transferred or assigned in the State of Florida and for each renewal of the same * * *". The operation of the tax set forth in Paragraphs 1 and 4 of Schedule A of the Act is limited to documents issued, made, executed, delivered, sold, transferred or assigned in the State of Florida.

It is my opinion that because the bonds referred to in your question were not issued, made, executed, delivered, sold, transferred or assigned in the State of Florida, they are not subject to the terms and provisions of Chapter 15,787, *supra*.

I am returning herein the correspondence which was attached to your letter.

October 16, 1935.

DOCUMENTARY STAMP TAX LAW—APPLICABILITY TO RE-ISSUE
OF NATIONAL BANK STOCK—CHAPTER 15787, ACTS OF 1931

Dear Sir:

This is in response to your oral inquiry with reference to applicability of the Documentary Stamp Tax Act, Chapter 15787, Acts of 1931, to the following situation:

A national bank has been required by the Comptroller to call in its capital stock and re-issue new certificates showing that the stock is common to distinguish it from preferred stock. The bank's stockholders are being requested to forward their certificates, endorsed in blank, to the bank for cancellation, and thereupon the bank will issue to the same stockholders new forms of certificates.

The question is whether either the new certificates or the endorsement on the present certificates will require State documentary stamps.

It is my opinion that the State Documentary Stamp Tax does not apply to the situation above outlined. This is true because schedule A of Section 1 is specifically made applicable only to *original* issues, and upon the completion of the transaction contemplated there is not effected a change of ownership of the stock or any interest in the corporation; but on the contrary each stockholder will own substantially the same corporate interest which he owned before the exchange was effected. See prior opinion under date of July 25, 1934, reported in 1933-34 Bi-ennial Report, page 42.

DOCUMENTARY STAMP TAXES

March 18, 1936.

TAXATION—DOCUMENTARY STAMPS—DEED CONVEYING PROPERTY OWNED BY CORPORATION TO PERSON WHO OWNED ALL BUT TWO SHARES OF STOCK, IS SUBJECT TO PROVISIONS OF CHAPTER 15787, ACTS OF 1931

Dear Sir:

Receipt is acknowledged of your letter in which you request my opinion upon the following question:

Is a deed conveying real estate owned by a corporation to a person who owns all but two qualifying shares of its capital stock in consequence of the dissolution of the corporation, subject to the terms and provisions of Chapter 15787, Laws of Florida, Acts of 1931, generally referred to as the Florida Documentary Stamp Tax Act.

Paragraph 5 of Schedule A of Section 1 of Chapter 15787, *supra*, levies a tax

"On promissory notes, non-negotiable notes, written obligations to pay money, assignment of salaries, wages, or other compensation, made, executed, delivered, sold, transferred, or assigned in the State of Florida, and for each renewal of the same on each \$100.00 of the indebtedness or obligation evidenced thereby, 10¢. Mortgages which incorporate the certificate of indebtedness, not otherwise shown in separate instruments, are subject to the same tax at the same rate."

The tax is measured by the consideration paid for the deed, and if there is any consideration for the deed, it is subject to the tax, the amount thereof being determined by the value of the consideration and the rate of the tax.

In this case the deed is made in consideration of the surrender of all of the stock of the corporation except two shares. In my opinion the deed is subject to the terms and provisions of Chapter 15787, *supra*, and the amount of the tax will be 10¢ for each \$100 or fractional part thereof of the consideration or value of the stock surrendered.

April 9, 1936.

TAXATION—DOCUMENTARY STAMPS—APPEARANCE BONDS

Dear Sir:

Receipt is acknowledged of your letter requesting my opinion upon the following question, to-wit:

If a person charged with a criminal offence in one county gives an appearance bond, upon which he pays the documentary stamp taxes

DOCUMENTARY STAMP TAXES

required by Chapter 15787, Acts of 1931, and later the case is transferred for trial to another county and the defendant is required by law to give a bond in the latter county, is this bond also subject to the tax levied by Chapter 15787, *supra*?

On August 26, 1932, I rendered an opinion to the effect that an appearance bond in a criminal case was subject to the terms and provisions of Chapter 15787, Laws of Florida, Acts of 1931, generally referred to as the Florida Documentary Stamp Tax Act.

The law does not exempt from its terms and provisions and appearance bond such as described in your question. It is true that the bond is given in the same proceeding and to assure the presence of the defendant in the same prosecution. However, the criminal law requires that when a case is transferred from one county to another for trial, the defendant shall give a new bond in the court to which the case has been transferred. The new bond is an original obligation and is entirely separate and distinct from the bond given in the county from which the case was transferred.

This is not double taxation; however, the Constitution does not prohibit double taxation. See *Klemm vs. Davenport*, 100 Fla. 627, 129 So. 904.

It is my opinion that an appearance bond such as referred to in your question is subject to the terms and provisions of Chapter 15787, *supra*.

April 10, 1936.

**TAXATION—DEEDS FROM PRIVATE OWNERS TO THE SHIP CANAL
AUTHORITY OF THE STATE OF FLORIDA SUBJECT TO
DOCUMENTARY STAMP TAX**

**DEED FROM THE SHIP CANAL AUTHORITY OF THE STATE OF
FLORIDA TO UNITED STATES OF AMERICA NOT SUBJECT
TO DOCUMENTARY STAMP TAX**

Dear Sir:

Receipt is acknowledged of your letter requesting my opinion as to whether or not deeds from private owners to The Ship Canal Authority of The State of Florida, and deeds from The Ship Canal Authority of The State of Florida to the United States of America are subject to the terms and provisions of Chapter 15787, Laws of Florida, Acts of 1931, generally referred to as the Florida Documentary Stamp Tax Act.

In a letter to you from the Honorable Herman Ulmer, General Counsel for The Ship Canal Authority of The State of Florida, it is said:

"The Ship Canal Authority is an agency of the State of Florida, having been created by Chapter 16176, Laws of 1933,

DOCUMENTARY STAMP TAXES

for the purpose of acquiring a right-of-way and constructing a ship canal across the State of Florida. As such agency or department of the State, it is now engaged in the process of acquiring the right-of-way for such canal. The actual construction work of the canal is being done by the United States of America, and the right-of-way, as acquired, will be conveyed by The Ship Canal Authority to the United States.

"The right-of-way is, of course, being acquired piece-meal in small parcels and the conveyance to the United States will probably be in groups of separate purchases, or in solid sections of the right-of-way."

Paragraph 5 of Schedule A of Section 1 of Chapter 15787, *supra*, places a documentary stamp tax

"On deeds, instruments, or writing, whereby any lands, tenements, or other realty or any interest therein, shall be granted, assigned, transferred, or otherwise conveyed to or vested in the purchaser or purchasers or any other person or persons, by his, her or its direction, on each \$100.00 of the consideration thereof, 10¢: Provided, that when the full amount of the consideration for the execution, assignment, transfer, or conveyance, is not shown in the face of such deed, instrument, document, or writing, then in such event the tax shall be at the rate of 10¢ for each \$100.00 or fractional part of the consideration therefor."

Section 4 of the Act makes it a penal offence to make, sign, issue, or accept, or cause to be made, signed, issued, or accepted, any instrument, document, or paper of any kind or description whatsoever described in Schedule A, without the full amount of the tax levied by the Act having been paid.

It appears that the duty to place Florida Documentary stamps upon a deed whereby any lands, tenements, or other realty, or any interest therein is conveyed, according to the consideration paid thereof, rests upon the grantor and upon the grantee.

The State of Florida and the Federal Government and their instrumentalities are exempt from the provisions of the Act, but this does relieve a private grantor in a deed made to The Ship Canal Authority of The State of Florida, which is an instrumentality of the State, from his duty to comply with the terms of the Act.

McCulloch vs Maryland, 4 Wheat. 316, 4 L. Ed. 579.

Owensboro National Bank vs City of Owenboro, 173 U. S. 634, 43 L. Ed. 850.

It is my opinion:

(1) That deeds from private owners to The Ship Canal Authority of The State of Florida, conveying land for a consideration, are subject to the terms and provisions of Chapter 15787, *supra*.

DOCUMENTARY STAMP TAXES

(2) That deeds from The Ship Canal Authority of the State of Florida to the United States of America are not subject to the terms and provisions of Chapter 15787, *supra*.

September 1, 1936.

DOCUMENTARY STAMP TAX—APPLICATION OF SAME TO
PROMISSORY NOTES OR OTHER INSTRUMENTS
EXECUTED TO OR BY FEDERAL AGENCIES
AND INSTRUMENTALITIES

Dear Sir:

This is in reply to your letter requesting my opinion as to whether or not Chapter 15787, Laws of Florida, Acts of 1931, known as the State Documentary Stamp Tax Act, applies to notes, instruments, and documents executed to the Federal Intermediate Credit Bank, Central Bank for Cooperatives, Columbia Bank for Cooperatives, the Production Credit Corporation of Columbia, or Production Credit Associations. With your letter you enclose correspondence with Honorable Harry D. Reed, General Counsel for the Farm Credit Administration of Columbia, as well as an extensive brief dealing with the legal problems involved.

It is quite apparent that the agencies hereinabove named are federal agencies and instrumentalities. They are specifically exempt under the provisions of Title 12, U. S. C. A., Section 1138 (c), as amended, from all state taxes except such as may be imposed upon real property or tangible personal property. Insofar, then, as the agencies above named are concerned, there can be no liability for the payment of the tax because they are specifically exempted therefrom.

It has been further urged that the individuals who execute promissory notes and other instruments of credit to said agency should not be liable as individuals for the payment of the tax. Under date of April 10, 1936, in an opinion dealing with the liability of individuals for payment of the documentary stamp tax on deeds to the Ship Canal Authority of the State of Florida, I stated the following:

"It appears that the duty to place Florida Documentary stamps upon a deed whereby any lands, tenements, or other realty, or any interest therein is conveyed, according to the consideration paid thereof, rests upon the grantor and upon the grantee.

"The State of Florida and the Federal Government and their instrumentalities are exempt from the provisions of the Act, but this does relieve a private grantor in a deed made to the Ship Canal Authority of The State of Florida, which is an instrumentality of the State, from his duty to comply with the terms of the Act."

DOCUMENTARY STAMP TAXES

I further stated in an opinion under date of September 22, 1934, and appearing at page 38 of the Biennial Report of the Attorney General for 1933-34, the following:

"It is my opinion that the terms of Chapter 15787, supra, do not apply to the Commodity Credit Corporation because it is an instrument of the Federal Government. *McCulloch vs. Maryland*, 4 Wheat 316, 4 L. ed. 579; *Owensboro National Bank vs. City of Owensboro*, 173 U. S. 634, 43 L. ed. 850. The fact that the payee of the note may not be subject to the terms and provisions of the Act does not in any way relieve the maker from his legal duty to comply with the terms of the Act by attaching thereto and cancelling the required amount of Florida Documentary Stamps."

It is argued that the individuals who execute such promissory notes and other instruments of credit to said agencies should be exempt because otherwise the tax would constitute a burden upon the transactions and operations of federal agencies and a direct obstruction to the exercise of federal powers. Most of the cases cited in support of this proposition involve the actual imposition of the tax either directly or indirectly upon the federal agencies. In Florida the federal agency is denied no right or privilege and its security is not impaired in the slightest degree by reason of the non-payment of the tax. The liability for payment rests solely upon the individual executing the promissory notes and other credit instruments. It is to be noted that while the federal agencies above named are exempt from the payment of intangible personal property taxes as above pointed out, promissory notes and mortgages and other instruments of credit are not themselves designated as federal instrumentalities and exempted as such. The exemption, therefore, is limited to the liability of said federal agencies to pay the tax.

It is further urged that if the power to tax the individuals who execute the instruments of credit to said federal agencies is conceded then that power could be used to nullify the very purposes for which said federal agencies were established. I cannot agree to the conclusion. The fact that power legally exists is no limitation of the power of the courts to curb any attempt at abuse of that power.

In view of the principles which I have stated, it is my opinion that the federal agencies named hereinabove are not required to pay the tax and are not subject to any inconvenience or penalty by reason of the non-payment of the tax but that the individuals that execute credit instruments to said agencies are required to pay the tax.

February 8, 1936.

DOCUMENTARY STAMP TAX, DEEDS OF GIFT

Dear Sir:

I have your letter in which you recite the following facts:

"The State Road Department, in securing deeds for roads

DOCUMENTARY STAMP TAXES

= already constructed and roads to be constructed, secures a fair percentage by gift from the property owners. It has been brought to our attention by the Comptroller's office that these deeds do not bear documentary stamp tax."

You request my opinion as to whether or not deeds to right of ways which are accepted by the State Road Department as gifts are subject to the terms and provisions of Chapter 15,787, Laws of Florida, Acts of 1931, generally referred to as the Florida Documentary Stamp Tax Act.

Paragraph 5 of Scheule A of Chapter 15,787, *supra*, levies a tax "on deed, instruments, or writings, whereby any lands, tenements or other realty or any interest therein, shall be granted, assigned, transferred, or otherwise conveyed to or vested in the purchaser or purchasers or any other person or persons, by his, her, or its direction, on each \$100.00 of the consideration therefor, 10¢:*****". The tax is measured by the consideration paid for the deed, instrument or writing and if no consideration passes, which can be valued in money, there is no tax.

It is my opinion that deeds to right-of-ways which are accepted by the State Road Department as gifts are not subject to the terms and provisions of Chapter 15,787, *supra*.

March 27, 1935.

DOCUMENTARY STAMPS NOT REQUIRED ON SALE, TRANSFER OR ASSIGNMENT OF BONDS ISSUED BY COUNTY OR MUNICIPALITY

Dear Sir:

I have your letter in which you request my opinion as to whether or not the sale, transfer or assignment of bonds issued by a County or Municipality is subject to the terms and provisions of Chapter 15,787, Laws of Florida, Acts of 1931, known as the Florida Documentary Stamp Tax Act.

It is my opinion that the sale, transfer or assignment of bonds issued by a County or Municipality is not subject to the Documentary Stamp Tax Act. Paragraph 1 of Schedule A of the Act places a tax on the original issue of bonds, debentures or certificates of indebtedness issued in Florida by any person, firm or corporation but does not place a tax on the sale, transfer or assignment of such bonds. Paragraph 4 of Schedule A places a tax on the making, executing, delivering, selling, transferring or assigning in the State of Florida "promissory, non-negotiable notes, written obligations to pay money * * *". If the Legislature had intended for the Act to cover the sale, transfer or assignment of bonds, it would have included the word "bonds" in Paragraph 4 of Schedule A.

34 BIENNIAL REPORT OF THE ATTORNEY GENERAL
DOCUMENTARY STAMP TAXES

December 15, 1936.

DOCUMENTARY STAMP TAX—CHAPTER 15,787, ACTS OF 1931

Dear Sir:

I have your letter of recent date in which you request that I review certain decisions heretofore rendered by this office relative to the affixation of Documentary Stamps under Chapter 15,787, Laws of Florida, Acts of 1931, with particular reference to the recent decision of the Florida Supreme Court in the case of Metropolis Publishing Company versus Lee.

In the Metropolis case the Supreme Court held that an advertising agreement between newspapers and their customers was not subject to the Documentary tax. In its opinion the Court said: "The agreement brought in question does not come within any of the foregoing documents or instruments. It amounts to nothing more than an executory agreement to purchase advertising space, the amount of which is uncertain and no obligation to pay arises until the advertising is run."

"It is not an agreement that would support an action for recovery before the advertising is run. Reduced to its final analysis, it grants a privilege to the customer to secure advertising space, there is no certain basis on which the tax can be computed and it is not squarely within the classifications enumerated within the Act."

"The instrument is not a direct obligation to pay money but it is an executory agreement to take advertising space if desired on the conditions mentioned. It is a mere commercial convenience."

"A careful examination of Chapter 15,787 discloses that it was intended to create a selective tax applicable to a class of instruments recognized by the law merchant as particularly susceptible to the imposition of the Documentary tax."

Prior to the State Supreme Court's decision, the Federal District Court in the case of Bankers Trust Company, et al., versus Florida East Coast Railway Company, 8 Fed. Supp. 874, held that a contract for the sale and purchase of electricity containing a promise to consume a certain minimum within a discriminated period was not subject to the stamp duty as "written obligation to pay money" within the statute taxing promissory and non-negotiable notes, written obligations to pay money and renewal of sale, since a promise to pay money was incidental to the contract which was essentially one of sale and purchase.

The Court in its opinion said: "The phrase 'written obligations to pay money' which follows immediately after 'promissory notes, non-negotiable notes,' is to be construed ejusdem generis, as referring to obligations of the same genus as those specifically named immediately

DOCUMENTARY STAMP TAXES

prior to that phrase, which are obligations having for their essential purpose the repayment of money—usually money previously loaned. The language which follows 'for each renewal of the same' is peculiarly applicable to notes, but not ordinarily to contracts of sale and purchase." You will observe that under the Metropolis decision, the Court apparently limits instruments subject to taxation as those instruments recognized by the law merchant, which would mean notes and other obligations given primarily for the payment of money loaned; This same construction was placed on the Act by the Bankers Trust Company versus Florida East Coast Railway Company, *supra*, wherein the Court attaches a great deal of significance to the phrase "any renewal thereof" as being persuasive that the Legislature did not intend to tax ordinary commercial contracts of the character therein considered.

It is, therefore, my opinion that such contracts as those used by the picture distributing companies, agreements used by the Western Union leasing clocks, etc., to their customers, advertising contracts, and other similar instruments where the primary purpose of the instrument is not the payment or repayment of money but an executory contract for the furnishing of services or materials, do not require the affixation of Documentary Stamps. Opinions heretofore rendered by me prior to the Metropolis decision should be disregarded.

SECTION 3

INTANGIBLE PERSONAL PROPERTY TAXES

December 11, 1935.

TAXATION OF INTANGIBLE PERSONAL PROPERTY OWNED BY
FEDERAL BUILDING AND LOAN ASSOCIATIONS AND TAXA-
TION OF STOCK ISSUED BY SUCH ASSOCIATIONS
OWNED BY INDIVIDUALS*Dear Sir:*

I have your letter in which you request my opinion as to whether or not Intangible Personal Property owned by Federal Building and Loan Associations and the shares of stock issued by such Associations and owned by individuals are subject to the terms and provisions of Chapter 15,789, Laws of Florida, Acts of 1931, generally referred to as the Florida Intangible Tax Law.

The Federal law does not provide for the organization of Federal Building and Loan Associations but the Federal Savings and Loan Associations are in many respects comparable to the Building and Loan Associations.

Chapter 16,843, Acts of 1935, specifically provides that "Federal Savings and Loan Associations and stockholders therein shall be entitled to the same exemptions from taxation or otherwise that are now provided by law or which may hereafter be provided by law for Florida Building and Loan Associations, and all laws now existing providing any such exemptions are hereby made applicable to Federal Savings and Loan Associations and stockholders therein".

On October 11, A. D. 1935, I rendered an opinion to you holding that the shares of stock of Federal Savings and Loan Associations owned by residents of Florida are taxable under the Intangible Tax Law of the State.

May 31, 1935.

INTANGIBLE PERSONAL PROPERTY TAXES SHOULD NOT BE
ASSESSED AGAINST A TRUSTEE UNDER A MORTGAGE
FOR THE VALUE OF NOTES SECURED THEREBY
WHERE THE TRUSTEE DOES NOT OWN, CON-
TROL, MANAGE OR HAVE THE CUSTODY
OF THE NOTES*Dear Sir:*

I have your letter requesting my opinion upon the following question:

INTANGIBLE PERSONAL PROPERTY TAXES

Should Intangible Personal Property taxes be assessed against a Trustee under a mortgage for the value of the notes secured thereby where the Trustee does not own, control, manage or have the custody of the notes?

Under the terms of the statute, all Intangible Personal Property subject to taxation in Florida must be returned for taxes. (Section 8, Chapter 15,789, Laws of Florida, Acts of 1931, being Section 1041 (7) Compiled General Laws, 1934 Supplement). This Section makes it "the duty of every person, firm or corporation owning or having the control, management or custody of Intangible Personal Property in this State which is subject to taxation under the laws of Florida, including trustees, executors, administrators, receivers and all other fiduciaries, to return the same for taxation to the County Assessor of Taxes in the proper County on or before the first day of April of each and every year, giving the character and description of such Intangible Personal Property". You will observe that under this Section the only Intangible Personal Property a Trustee is required to return for taxation is that which he *owns, controls, manages, or has in his custody*. An assessment of Intangible Personal Property taxes against a Trustee can only be made for the value of the Intangible Personal Property which he owns, controls, manages or has in his custody.

In view of the foregoing, it is my opinion that Intangible Personal Property taxes should not be assessed against a Trustee under a mortgage for the value of the notes secured by the mortgage when the Trustee does not own, control, manage or have the custody of the notes.

I am returning herewith the correspondence attached to your letter.

March 28, 1935.

**ALL TANGIBLE AND INTANGIBLE PERSONAL PROPERTY OF
TAXPAYER MAY BE SEIZED AND SOLD TO ENFORCE PAY-
MENT OF TANGIBLE PERSONAL PROPERTY TAXES**

Dear Sir:

I have your letter in which you request my opinion as to what personal property of the taxpayer may be seized and sold for the payment of taxes levied and assessed against the taxpayer because of the ownership of Tangible Personal Property.

Sections 955 and 956, Compiled General Laws of Florida, provide for the seizure and sale by the County Tax Collector of personal property belonging to a taxpayer for the payment of taxes levied and assessed because of the ownership of personal property.

It is my opinion that in collecting personal property taxes which were levied and assessed against the taxpayer because of the ownership

INTANGIBLE PERSONAL PROPERTY TAXES

of Tangible Personal Property, the County Tax Collector is authorized to seize and sell *all* personal property, both Tangible and Intangible, belonging to the taxpayer within the County where the levy and assessment were made. This applies to motor vehicles as well as other personal property. Section 13 of Article IX of the State Constitution exempts motor vehicles from ad valorem taxes, but it does not exempt them from seizure and sale by the Tax Collector in enforcing the payment of personal property taxes duly levied and assessed against the owner of motor vehicles because of the ownership of personal property other than motor vehicles. See 61 C. J. 1041.

March 28, 1935.

TANGIBLE AND INTANGIBLE PERSONAL PROPERTY OF TAXPAYER
MAY BE SEIZED AND SOLD TO ENFORCE PAYMENT OF
INTANGIBLE PERSONAL PROPERTY TAXES

Dear Sir:

I have your letter in which you request my opinion upon the following questions:

1. How may taxes, levied and assessed against the taxpayer because of ownership of Intangible Personal Property, be collected?
2. Is a tax levied and assessed upon Intangible Personal Property a lien upon the real and personal property of the taxpayer against whom the levy and assessment is made?

1.

Taxes levied and assessed against the taxpayer because of ownership of Intangible Personal Property may be collected in the same manner as other personal property taxes are collected. See Section 11, Chapter 15,789, Laws of Florida, Acts of 1931. See Sections 955 and 956, Compiled General Laws of Florida, which provide the manner of seizure and sale of personal property for unpaid personal property taxes. In collecting Intangible Personal Property taxes, the Tax Collector is authorized to seize and sell *all* personal property, both Tangible and Intangible, belonging to the taxpayer within the County where the levy and assessment were made. See 61 C. J. 1041.

2.

Section 19 of Chapter 15,789, *supra*, makes Intangible Personal Property taxes "a lien on all the real or personal property of the taxpayer in the County in which they are assessed or in any other County in the State of Florida from the time the tax upon Intangible Personal Property becomes due".

INTANGIBLE PERSONAL PROPERTY TAXES

November 25, 1936.

**INTANGIBLE TAX ON CONDITIONAL SALES; CHAPTER 15,789,
ACTS OF 1931**

Dear Sir:

I have your letter of November 24th, in which you request that I advise you "what class of intangible property are bills receivable represented by retain titles on merchandise sold on installments."

Contracts for the sale of merchandise take many forms. Often no title is retained by the seller and the contracts are in form chattel mortgages; in other contracts notes are given and the seller retains title to the property, the contract in form being a conditional sale contract. In practically all of such contracts, however, it can generally be said that a lien on the property is preserved for the seller.

It is, therefore, my opinion that the class of property referred to in your letter should be taxed under Class B of Section 3 of Chapter 15,789, Acts of 1931.

November 30, 1936.

**ASSESSMENT OF INTANGIBLE TAXES—CHAPTER 15,789, ACTS OF
1931—SECTION 10**

Dear Sir:

I have your letter of November 25th, in which you ask the following question:

"In a case where the taxpayer filed an intangible tax return, as required by law, and the Tax Assessor increased the amount of the assessment without then or thereafter, notifying the taxpayer of such increase, and the time for reviewing and equalization has expired, is the taxpayer required to pay taxes on the basis of the increased assessment or the original return?"

Section 10 of Chapter 15,789, provides that if the taxpayer has filed his return, the Tax Assessor, if he finds that the valuation of the property as described in such return is greater than that shown by the return, shall give notice by mail to the person filing the return. The said Section further provides that the taxpayer shall have the right to appeal from the decision of the Tax Assessor to the Board of Equalization.

It is, therefore, my opinion that if the taxpayer has not been notified as required by this Section that his assessment has been increased, he is only required to pay taxes on the basis of the original return.

SECTION 4

INHERITANCE OR ESTATE TAXES

September 30, 1936.

DOMICILE IN FLORIDA—ESTATE TAX UNDER CHAPTER 16,015,
ACTS OF 1933*Dear Sir:*

Receipt is acknowledged of your request for an opinion as to the effect of domicile within the State of Florida for the purposes of estate taxation by the State of Florida.

By its Constitution, the State of Florida is prohibited from imposing any estate or inheritance tax exceeding the credit allowed by the laws of the United States upon Federal estate taxes and the power to impose such a tax can be exercised only to the extent of absorbing the credit permitted by the laws of the United States. Florida Constitution, Article IX, Section 11, as amended November 4, 1930. The Estate Tax Law of Florida, Chapter 16,015, Laws of Florida, 1933, Approved June 7, 1933, is an estate tax law designed to absorb the credit allowed by the Federal Estate Tax Law. As applied to the estate of decedents of Florida, the amount of the tax is the difference between the credit allowed under the Federal law and the amount of estate or inheritance taxes paid to the States of the United States. The tax upon the estate of non-residents of the State of Florida is an apportioned amount of the allowable credit under the Federal Act based upon the ratio of the property situate in Florida to the entire estate wherever situate. Under the Florida Constitution and statutes, the estate of a resident of Florida is not and cannot be subjected to an estate or inheritance tax imposed by Florida for which the United States will not allow credit.

Any estate tax is an excise tax imposed upon the transfer of property upon the death of the owner, or a transfer made in contemplation of or to take effect at or after the death of the owner. Since each State, as well as the United States, has the power to impose estate and inheritance taxes, occasionally difficult questions arise in which two or more states assert the power to impose a tax on particular property.

Taxes upon real estate can be imposed only by the state in which the property is situated. The same rule applies to tangible personal property. Intangible personal property is deemed to have its situs at the domicile of the owner, both for the purpose of determining the succession upon his death and also for the purpose of determining which state may impose an estate tax upon such property. A possible exception to this doctrine exists where intangible personal property has a business situs in some other than the domicile of the owner.

The difference between the rates of estate and inheritance taxes imposed by the different states have led a number of people to change

INHERITANCE OR ESTATE TAXES

their domicile from one State to another for the purposes of diminishing the taxes payable at death. A change of domicile made from such a motive is not subject to legal criticism. The question of domicile becomes important as both the state from which and the state to which a person may have removed or intended to remove may claim the right to impose a tax upon his estate at his death.

In the Restatement of Conflict of Laws of the American Law Institute, the term "domicile" is thus defined:

"Domicile is the place with which a person has a settled connection for legal purposes; either because his home is there or because the place is assigned to him by the law. A shorter definition to one who understands the vernacular might be 'one's domicile is the place where one belongs'".

Mr. Justice Holmes has given the following definition:

"The very meaning of domicile is the technically pre-eminent headquarters that every person is compelled to have in order that certain rights and duties that have been attached to it by the law may be determined."

Williamson v. Osenton, 232 U. S. 619; 58 L. Ed. 758, 34 Sup. 442 (1914).

A very learned discussion of the meaning of the term and of the difficulties in determining domicile is to be found in the celebrated case of Smith v. Croom, 7 Fla. 81. From the opinion of Mr. Justice DuPont, we quote the following:

"It must readily occur that no compass of language can ever fully comprehend the variety of acts which shall in any given case tend to prove the establishment of a domicile; for these acts will ever be as various as are the occupations of men or the emotions of the mind."

In the average case, the question is not a close one and there is not usually evidence of a conflicting nature upon the question of intent. There must, of course, be an abandonment of the old home and the establishment of a new home. In order to do this, it is not required that a dwelling house be purchased in the new domicile. Among the various factors, none of which are conclusive and the weight given to them varies, the courts have considered the following as bearing upon the question as to whether a new domicile has in fact been established:

- (a) Ownership or lease and occupancy of dwelling.
- (b) Transaction of business at new residence.
- (c) Registration as voter and voting.
- (d) Returning tangible property for taxation and payment of intangible property tax.
- (e) Making income tax returns and payment of income tax in

INHERITANCE OR ESTATE TAXES

district claimed as domicile.

(f) Declaration of residence in the will upon the direction of the testator.

(g) Recitals of residence in deeds and other legal documents.

(h) Registration of automobile and payment of automobile license.

(i) Transfer of bank account and securities to new residence.

(j) Registering at a hotel as resident of a certain place claimed as the domicile.

(k) Transfer of church membership.

(l) Membership in local clubs, societies, lodges, etc.

(m) Declarations as to change of residence in both oral and written communications. Whether oral declarations are admissible in evidence is a question upon which the courts are divided.

(n) Claim homestead exemption as provided by Constitution and statute.

The weight to be given to the various evidentiary factors listed above is not here considered. An attempt to set forth all of the possible facts and factors that might in a given case have bearing upon the question of domicile, is an impossibility. An attempt has been made to set forth but few of the circumstances.

Not infrequently does a person have a residence in more than one state and particularly is this true of many people residing in Florida. In such a case all of the facts and circumstances may require consideration in order to determine which is the place of domicile. A person may have more than one dwelling but cannot have more than one domicile at any given time. Where a domicile is once established, the law presumes that it continues until another is established, and this legal presumption may control in a close case.

SECTION 5

MOTOR VEHICLE TAXES

April 24, 1936.

TAXES—MOTOR VEHICLES—HOUSE BILL NO. 648, ACTS OF 1935,
CHAPTER 17115, ACTS OF 1935

Dear Sir:

This is in reply to your letter of March 31, in which you request my opinion as to whether House Bill No. 648, known as Chapter 17115, Acts of 1935, exempts certain transportation companies holding permits or certificates from the Railroad Commission to operate for hire over the highways of the State from payment of the mileage tax on that portion of their operation between Jacksonville Beach and Jacksonville. You state in your letter that the Railroad Commission has advised that the tax is payable on such mileage by authorized companies for the reason that the intent of Chapter 17115 was to relieve companies from the requirement of a permit or certificate entirely if no other highways of the State than this particular Road No. 78 was used.

It is my opinion that the Railroad Commission has properly construed the statute.

The intent of the exemption provided in the statute is set forth in the following statement contained therein:

"Recognizing and declaring that the transportation exempted in this Section is casual, seasonal and not on regular routes or schedules, is slow moving, frequently in special equipment, and for comparatively short distances over the improved highways of the State, there shall be exempted from the provisions of this Act, and from commission jurisdiction and control, motor vehicles * * * *"

It is my opinion that the exemption provided for in the statute applies to that class of companies which operate only on State Road No. 78 and territory adjacent thereto. I believe that the exemption applies to that class of companies rather than to the use of that highway as such.

December 18, 1936.

MOTOR VEHICLE LICENSE TAXES—ISSUANCE OF EXEMPT
LICENSE PLATES TO REPRESENTATIVES OF FOREIGN
GOVERNMENTS

Dear Sir:

This is in reply to your inquiry of December 15, in which you request my opinion as to whether or not you are authorized to issue of-

MOTOR VEHICLE TAXES

ficial or exempt license plates to representatives of foreign governments on the basis of \$2.00, by virtue of the provisions of Section 1286, Compiled General Laws of Florida, 1927 (Supplement). The pertinent provision in said statute reads as follows:

"Provided, however, that no license plate shall be issued for less than five dollars except vehicles owned and operated by municipalities, counties and other government agencies, which semiannual rate shall not be less than two dollars."

There is nothing in the provision of law quoted above to authorize the issuance of such official or exempt licenses to representatives of foreign governments.

December 29, 1936.

TAXATION—AUTO TRANSPORTATION COMPANY MILEAGE
TAX—DISTRIBUTION TO CITIES

Dear Sir:

I am in receipt of your letter of the 18th instant enclosing communication under date of the 16th instant from Mr. _____ of Bagdad, Florida, relating to Warrant No. 077889, issued December 31, 1935, payable to the City of Caryville in the sum of \$25.00 under Chapter 14,764, Laws of Florida, Acts of 1931, relating to mileage tax on auto transportation companies and providing for the distribution of same. I assume that the distribution was made under Section 17 of said Act, which reads in part as follows:

"All remaining mileage taxes collected under this Act from auto transportation companies holding Certificates of Public Convenience and Necessity in common or private contract carriage shall be distributed to (a) Twenty-five Dollars (\$25.00) annually from each certificate holder to all incorporated cities and towns where any such auto transportation companies maintain depots, warehouses, stations or agencies in such city or town; (b) The remainder of such fund to each county whose highway system is used as a part of the route authorized in the certificate of Public Convenience and Necessity issued to any auto transportation company its part of the balance of such fund in the proportion that the mileage traveled over its highway system bears to the entire mileage traveled by the motor vehicle for which such taxes are paid. * * *"

Mr. _____ in his letter states the City of Caryville, while holding a Charter, has been very inactive for the last decade; that no elections are held and there are no town officers at the present. The writer states that it has occurred to him, with your consent and the State Treasurer, he might endorse the above mentioned warrant on

MOTOR VEHICLE TAXES

behalf of the City of Caryville for payment to the Old Spanish Trail Association which would provide the donation expected from Caryville and would materially assist that Association in promoting travel on the Old Spanish Trail.

In reply I beg to say the Comptroller and State Treasurer would not be authorized to give authority for the signing of a municipal warrant except by an officer of the municipality.

Attention is called to Section 14 of Article XVI of the State Constitution, reading as follows:

"All State, County and municipal officers shall continue in office after the expiration of their official terms until their successors are duly qualified."

In view of said provision of the Constitution there may be some Caryville City Officer who would be authorized to endorse said warrant, or the citizens of said municipality may revive the functioning of said City and elect the proper officers. Otherwise, it would appear that said warrant should be returned to the State for distribution under the provisions of Section 17 of said Chapter 14,764, above quoted.

I return the above mentioned letter attached to your communication.

SECTION 6

GASOLINE TAXES

July 24, 1935.

GASOLINE INSPECTION FEE—SECTION 3965 C.G.L. 1927—
COLLECTABILITY AGAINST FEDERAL AGENCIES*Dear Sir:*

This acknowledges yours of July 22, 1935, wherein you ask two questions concerning the above mentioned statute.

This statute provides for a charge of 1/6th cent per gallon for the purpose of defraying the expense incident to inspection, testing and analyzing, of all "gasoline, kerosene and signal oil sold within this state, * * *."

Your first question is whether or not this fee may be required to be paid on gasoline shipped into Florida from other states for use by Federal agencies. The particular type of transaction involved is that of a purchase by the Federal government from certain petroleum companies, of gasoline for the use of the United States Army, Navy, or other Federal agencies. This gasoline is then shipped direct from the refinery located outside of the state of Florida, by common carrier, consigned to the particular Federal agency. No sale of such gasoline takes place within the State of Florida.

It is my opinion that under the terms of this section of the statute the fee involved is not collectable upon such gasoline. In other words, the spirit and intent of this statute is to protect the public against fraud on sales made within the State of Florida, and such fee is not collectable upon sales made without the State of Florida and shipped direct to the consumer. This is true, whether such consumer be the Federal government, the State government, or any private individual.

Your second question is whether or not such fee is collectable upon sales of gasoline to State and Federal agencies which are made within the State of Florida, the gasoline being delivered to the purchasers from storage plants within this state.

It is my opinion that this question must be answered in the affirmative, and that such fee is collectable. If the sale is within this state, then it makes no difference that the purchaser may be a State or Federal agency. I refer to my prior opinion of January 25, 1934, (page 76 of 1933-34 Report), calling attention to the fact that this is in no sense a tax, but merely a fee which may be charged against Federal agencies.

Trusting this answers your inquiry, and returning herewith the letter enclosed in your communication, I am

GASOLINE TAXES

November 26, 1935.

FLORIDA ARCHEOLOGICAL SURVEY (CHAPTER 16782, ACTS OF 1935) NOT SUBJECT TO GASOLINE SALES TAX

Dear Sir:

This will acknowledge receipt of your letter of November 20th, in which you request my opinion upon the question of whether or not Florida Archeological Survey is exempt from the payment of the gasoline sales tax or the gasoline storage tax levied by the State of Florida.

It is my opinion that since Florida Archeological Survey is a Department of the State of Florida (Chapter 16782, Acts of 1935), the gasoline sales tax and the gasoline storage tax levied by the State cannot be collected upon the gasoline used by your Department.

See page 75, Biennial Report of the Attorney General, 1933-34.

June 25, 1936.

TAXATION—AD VALOREM—PERSONAL PROPERTY—GASOLINE AND LUBRICATING OILS

Dear Sir:

This is in reply to your request for my opinion as to whether or not gasoline and lubricating oils carried in the tanks of filling stations are assessable as tangible personal property.

I find no specific statutory exemption of gasoline and lubricating oils from an ad valorem personal property tax. It is therefore my opinion that the statutes contemplate that such gasoline and lubricating oils are assessable as tangible personal property.

October 14, 1936.

GASOLINE TAX—EXEMPTIONS—THE FEDERAL LAND BANK OF COLUMBIA, THE INTERMEDIATE CREDIT BANK OF COLUMBIA, THE COLUMBIA BANK FOR CO-OPERATIVES, AND PRODUCTION CREDIT CORPORATION OF COLUMBIA

Dear Sir:

I acknowledge receipt of your letter of today in which you ask if the Federal Land Bank of Columbia, the Intermediate Credit Bank of Columbia, the Columbia Bank for Co-Operatives and Production Credit Corporation of Columbia are exempt from the tax known as the State Gasoline Tax upon gasoline bought and consumed by these corporations for use in their official functions.

GASOLINE TAXES

I have read the very able brief furnished by Messrs. _____ of Gainesville in support of the contention of the Federal Land Bank of Columbia and its affiliates that they are exempt from the State Gasoline Tax.

It is my opinion that the said Federal Land Bank of Columbia and its affiliates are exempt from the provisions of the State Gasoline Tax Law.

These corporations have been held to be instrumentalities or agencies of the Federal Government.

The Supreme Court of the United States in the case of Bibb Graves, as Governor versus The Texas Company, 80 L. Ed. 824, held that the Alabama Gasoline Tax Law did not cover sales to a Federal agency. This Court had previously held that the Mississippi Act did not apply to an instrumentality of the Federal Government. Panhandle Oil Company versus Mississippi, 277 U. S. 218. There were dissenting opinions in both of these cases but the majority opinion held that a gasoline tax in any guise, whether considered a tax on sales, with-drawals or storage, did not apply to Federal agencies.

SECTION 7

FUTCH BILL (Chapter 16252 of 1933)

August 1, 1935.

TAXATION—FUTCH ACT—CANCELLATION OF BONDS*Dear Sir:*

With your letter of July 11th, 1935, you enclosed copy of letter from _____ Clerk of the Circuit Court of Volusia County, with reference to bonds accepted and held by him under the Futch Act of 1933, Chapter 16252, on which you ask my advice as to whether the Board of County Commissioners has the right to cancel these bonds or whether they should become a part of the refunding issue.

There is no authority under the Futch Act or otherwise for either. The Futch Act merely authorizes the acceptance and holding of bonds for settlement, and this authority cannot be enlarged or varied by any authority other than the Legislature.

This is in line with my opinion to you dated September 28, 1934, which appears on page 186 of the Biennial Report of the Attorney General of Florida, 1933-34.

January 15, 1936.

FUTCH BILL—DEPOSIT OF BONDS RECEIVED IN PAYMENT OF DELINQUENT TAXES, AS COLLATERAL FOR R.F.C. LOAN*Dear Sir:*

This will acknowledge your communication of January 13, 1936, in which you state that you have on deposit a large amount of miscellaneous bonds other than school bonds, lying idle, which bonds were received in payment for delinquent taxes, and are now held by the Clerk of the Circuit Court under the provisions of Chapter 16252, Acts of Florida, Laws of 1933, commonly known as the Futch Bill.

You desire my opinion as to whether or not such bonds in the hands of the Clerk of the Circuit Court, received in payment of delinquent taxes and held under the provisions of the Act last above referred to, could be used as collateral security with which to secure a loan from the Reconstruction Finance Corporation, with which loan to retire certain past due time warrants.

It is my opinion that such bonds may not legally be deposited as collateral for such loan. You will note that the provisions of the Futch Bill above referred to make it plain that the bonds or matured interest coupons received in payment of delinquent taxes, "shall be held by the Clerk of the Circuit Court uncanceled, and proper account shall

FUTCH BILL (Chapter 16252 of 1933)

be kept thereof for adjustments of account between the County and such other taxing units or districts as may be interested at such time or times as the Board of County Commissioners may direct." This quotation is from Section 7 of said Act.

It is my opinion that there is no authority on the part of said Clerk, either expressly or by necessary implication from the provisions of the statute, which would authorize the use of these bonds as collateral security for such a loan.

February 5, 1935.

**TAXATION—PAYMENT OF PRINCIPAL AND INTEREST ON BONDS
RECEIVED IN PAYMENT OF TAXES UNDER FUTCH BILL**

Dear Sir:

I have your letter of January 25th, in which you state that the County of Hillsborough has received certain bonds in payment of taxes under the terms of Chapter 16,252, Laws of Florida, Acts of 1933, known as the Futch Bill, and that the Clerk of the Circuit Court, pursuant to a resolution of the Board of County Commissioners, has detached from the bonds the matured interest coupons and has presented them for payment, which payment has been refused by the Board of Administration.

You request my opinion as to "whether or not the State Board of Administration has the power to withhold this money, and whether or not, * * * * bonds received under the Futch Act cease to be live obligations".

The State Board of Administration, shortly after the Futch Bill became a law, adopted a policy under which they treated the bonds and coupons attached thereto which were received by the Counties in payment of taxes under the Futch Bill as being out of circulation and not requiring payment. During the early part of 1934, and pursuant to the terms of the State Board of Administration Act, the Board, in preparing the estimates of moneys required to be raised by ad valorem taxation by each of the counties and districts, did not take into consideration the principal and interest that had matured, or would mature, during the next fiscal year on the bonds and interest coupons which had been received for taxes under the terms of the Futch Bill. On October 11, A. D. 1934, I rendered an opinion to Mr. Knott to this effect. I quote the following from that opinion:

"In your letter you have reviewed the set-up which you are now using in connection with the Board of Administration and by which, as soon as you are properly notified that a bond has been taken in under the Futch Bill, in arriving at the amount of interest and principal requirements, you reduce accordingly

FUTCH BILL (Chapter 16252 of 1933)

such requirements for semi-annual interest payments on the issues of which such bonds are a part, and the principal amounts of such bonds are eliminated in calculating the requirements of such issues for principal due to be paid in the year or years of maturity.

"It is my opinion that this is correct, and that it was the definite intention of the Futch Bill to take out of circulation such bonds, and that relief may not be procured from the operation of this Act unless the taxing unit is relieved from making requirements for principal and interest on the bonds so taken in.

"I do not mean by this opinion to infer that in the final adjustment between the taxing units involved, it would not be proper to calculate the interest on the bond or bonds in determining the basis for such settlement."

Because of the fact that the State Board of Administration did not, in certifying to your county the amount of money required to be raised by taxation to pay the principal and interest due and to become due during the fiscal year 1934-35, take into consideration the bonds and interest coupons that had been received by the Clerk of the Circuit Court of Hillsborough County under the terms of the Futch Bill, the rule as set forth in that part of the above quoted opinion does not apply to your case.

Your Board of County Commissioners made their levy for taxes pursuant to the instructions of the State Board of Administration, which included a levy for the payment of the bonds and interest coupons received by the Clerk under the Futch Bill, which had matured or will mature during the fiscal year 1934-35, and sufficient funds are now in the hands of the Board of Administration to pay these bonds and interest coupons.

It is my opinion that the State Board of Administration is authorized and required to instruct the proper paying agent to pay the matured bonds and interest coupons received by the Clerk of the Circuit Court of your county under the Futch Bill, in the same manner and under the same conditions as it pays all other matured bonds and interest coupons of the same issues.

SECTION 8

EXEMPTIONS

July 23, 1935.

VETERANS' EXEMPTION FROM OCCUPATIONAL LICENSE TAXES
UNDER SENATE BILL 149, CHAPTER 17476, ACTS OF 1935*Dear Sir:*

I have your letter in which you request my opinion upon four questions involving the construction of Senate Bill 149, Laws of Florida, Acts of 1935, to-wit:

First: "Whether the \$50.00 exemption contemplates an exemption from both State and County and Municipal licenses in the total amount of \$50.00 when the State and County and Municipal licenses are added together."

It is my opinion that the exemption from occupational license taxes provided for by Senate Bill 149, *supra*, is limited to \$50.00 and can only be applied on a State occupational license or a County occupational license or a Municipal occupational license.

Second: "Whether the exemption contemplates that the veteran can only be exempted from the payment of one license, i.e., either State, County or Municipal, in an amount not to exceed \$50.00. For example: If the veteran should claim an exemption from a \$25.00 Municipal license then he would not be entitled to claim any exemption whatsoever from a State or County license, and vice versa."

It is my opinion that the exemption of \$50.00 can be applied on only *one* occupational license in an amount not to exceed \$50.00. If the person entitled to the exemption purchases a municipal occupational license for \$25.00, he can not then apply the remaining \$25.00 of his exemption on the cost of a State or County occupational license.

Third: "Whether the statute contemplates that the veteran may be exempted up to \$50.00 on each license, that is to say: up to \$50.00 on State license, up to Fifty Dollars on County license and up to \$50.00 on Municipal license."

It is my opinion that the statute contemplates that a person entitled to the exemption can only receive *one* exemption on one occupational license, either State, County or Municipal, in an amount not to exceed \$50.00. He is entitled to apply his exemption on either the State, County or Municipal occupational license.

Fourth: "The fourth question involved is whether the Statute contemplates that the veteran may be exempt up to \$50.00 on the three taxes mentioned in Senate Bill No. 724, Chapter 16848."

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EXEMPTIONS

It is my opinion that a person entitled to the exemption may apply it on the occupational license taxes levied and assessed under Subdivisions A or B or under Subdivisions A and B of Section 4 of Senate Bill 724, Laws of Florida, Acts of 1935, but he can not apply it upon the *permit fee* required by Section 3 of the Act because this charge is a *fee* and the exemption does not extend to *fees*.

Attention is directed to a very material change in this law. Under the 1933 Act (Chapter 16,299) a person entitled to the exemption could apply it on State, County and Municipal occupational licenses and if the total exemption was not absorbed by the charge made for one occupational license, he could apply the balance on the other occupational licenses. For example, (the exemption was \$25.00) if his State occupational license tax was \$15.00 and his County occupational license tax was \$7.50 and his Municipal occupational license tax was \$7.50, he could apply his exemption on the combined occupational license taxes of \$30.00 and by paying \$5.00 in cash he would receive all three licenses. The present law limits the application of the exemption to only *one* occupational license, either State, County or Municipal.

August 29, 1935.

VETERANS' EXEMPTION FROM LICENSE TO DEAL IN INTOXICATING LIQUORS? OR OPERATE SLOT MACHINES

Dear Sir:

Replying to your favor of August 26th., permit me to say Section 3 of House Bill No. 496, which is Chapter 16774, Acts of 1935, the same being an Act regulating and taxing the manufacture, distribution and sale of beverages containing more than One Percentum of alcohol has the following provision, to-wit:

"There shall be no exemption from the taxes herein provided to any person, association of persons or corporations, any law to the contrary notwithstanding".

Section 1 of Senate Bill No. 149, the same being Chapter 17476, Acts of 1935, which is an Act to amend Veteran's license laws contains the following provision, to-wit:

"Provided, however, that in no event, under this or any other law, shall any person, Veteran or otherwise, be allowed any exemption whatsoever from the payment of any amount required by law for the issuance of a license to sell intoxicating liquors, malt and vinuous beverages, or for the operation of any slot machines and punch boards, or any other gambling device".

You will see from the Acts of the Legislature of 1935, quoted above, that a disabled War Veteran is not entitled to any exemption whatso-

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ever to engage in the manufacture, distribution or sale of alcoholic beverages containing more than 1% of alcohol, and that they are not exempt in any amount from payment of the license tax to operate any slot machine, punch board or any other gambling device.

October 4, 1935.

WORLD WAR VETERANS TAX EXEMPTIONS AND STATUTORY PRIVILEGES

Dear Sir:

I have your letter of the 2nd instant, asking information for your American Legion Post relating to preferences and benefits under our statutes to World War Veterans.

In reply I regret to say we do not have such statutes in pamphlet form, but I am citing you certain statutes which you will find in the library of any attorney or in the office of the Clerk of the Circuit Court or of the County Judge of your County.

I refer you to the following:

Section 9 of Article IX of the State Constitution providing tax exemption in the sum of \$500.00 to every person who is a bona-fide resident of the State and has lost a limb or been disabled in war or by misfortune;

Section 897 (1), Compiled General Laws of Florida, 1934 Supplement, providing a method of procedure for securing the benefits of the above quoted constitutional provision;

Section 1269, Compiled General Laws of Florida, 1934 Supplement, providing certain license tax exemptions to permanent resident electors in the State producing an honorable discharge from the service of the United States during the World War or Spanish-American War;

Section 1279 (89), Compiled General Laws of Florida, 1934 Supplement, providing for free peddling license to Confederate Veterans of the Civil War and veterans of the World War or Spanish-American War falling within any exemption otherwise provided by law;

Section 1424, Compiled General Laws of Florida, 1927, authorizing the Trustees of the Internal Improvement Fund of the State of Florida to enter into contracts or agreements with Federal agencies or Departments for the purpose of locating returned soldiers, sailors and marines and others, who have served with the armed forces of the United States in the European War or other wars of the United States, including former

EXEMPTIONS

American citizens who served in the Allied Armies against the Central Powers and who have been repatriated and honorably discharged, and to utilize and convey in such manner as they deem advisable therefor such State lands as in their judgment may be necessary to carry out the purposes of this Section;

Section 2131, Compiled General Laws of Florida, 1934 Supplement, creating the office of State Service Officer and Assistant State Service Officer to be appointed by the Governor to investigate and place for final action by the Veterans' Bureau or other Federal Bureau, all claims for compensation, pension, training, hospitalization and rehabilitation of disabled Ex-service men of the Spanish-American War and the late World War and the dependents of such veterans;

Section 2146 (16), Compiled General Laws of Florida 1934, Supplement, providing for certain assistance to War veterans in securing Federal hospitalization;

Section 3935 (26) and 3935 (27), Compiled General Laws of Florida, 1934 Supplement, providing for issue of certificates to practice accountancy to War Veterans under certain circumstances;

Section 4151 (58), Compiled General Laws of Florida, 1934 Supplement, providing exemption from the payment of licenses of persons connected with race tracks to disabled Ex-service men of any war in which the United States was a participant;

Chapter 17,474, Laws of Florida, Acts of 1935, providing educational opportunities at State expense for children of certain deceased War veterans.

Answering your specific question with reference to Section 7, Article X of the State Constitution, relating to homestead exemptions, I beg to say World War veterans, the same as other citizens, are entitled to the benefits of said constitutional provision provided they are eligible under the terms of said constitutional provision for the exemption allowed.

November 8, 1935.

PERSONS ENTITLED TO VETERANS' EXEMPTIONS FROM OCCUPATIONAL LICENSE TAX UNDER CHAPTER 17,476, ACTS OF 1935 (SENATE BILL NO. 149)

Dear Sir:

The question has been presented as to whether all veterans or only disabled veterans are entitled to exemption from occupational license

EXEMPTIONS

tax under Chapter 17,476, Laws of Florida, Acts of 1935. On October 9, 1935, I rendered to you an opinion covering the extent of the exemptions granted under Chapter 17,476, *supra*. That opinion did not deal with the subject as to who would be entitled to the exemption.

It is my opinion that the exceptions granted by this Act are confined to "any bona fide permanent resident elector of the State of Florida who served as an officer or enlisted man in the United States Army, Navy or Marine Corps during the World War between April 6, 1917, and November 11, 1918, or in the Spanish-American War between April 21, 1896, and July 4, 1902, and who was honorably discharged from the service of the United States and who at the time of his application for license as hereinafter mentioned shall be disabled from performing manual labor *****.

The Acts sets out the character of the disability which will entitle the veteran to the exemptions provided for. Before the exemption will be granted "proof shall be duly made in each case that the applicant is entitled under the conditions of this law to receive the exemption herein provided for, which proof may be made by exhibiting a certificate of Government rated disability to an extent of 10% or more, or the affidavit or testimony of a reputable physician who personally knows the applicant, and who makes oath that the applicant is disabled from performing manual labor as a means of livelihood, or by the certificate of any post of Spanish-American War Veterans or World War Veterans, duly executed under the hand and seal of the Chief Officer and Secretary thereof attesting the fact that the applicant is disabled and entitled to receive a license within the meaning and intent of this Act, or by the production of a pension certificate issued to him by the United States of America by reason of such disability, or by such other reasonable proof as may be required by the tax collecting authority to establish the fact that such applicant is so disabled, and in addition by establishing to the satisfaction of such tax collecting authority by means of Certificate of Honorable Discharge or certified copy thereof that he is a veteran within the purview of this Act".

November 20, 1935.

TAXATION—EXEMPTION OF CHURCH PROPERTY

Dear Sir:

I have your letter of the 7th instant stating that your Board for the Superannuate Home of the Methodist Episcopal Church South for the Kentucky Conference would like to know if a piece of property in the State of Florida can be given to said Board and the same can be held by said Board for the benefit of your superannuate preachers with exemption from taxation.

In reply I quote you paragraphs 3 and 4 of Section 897, Compiled General Laws of Florida, 1927, together with Section 906 of the same

EXEMPTIONS

compilation, relating to exemptions to charitable institutions and houses of worship, as follows:

"Third—Such property of educational, literary, benevolent, charitable and scientific institutions within this State as shall be actually occupied and used by them solely for the purpose for which they have been or may be organized, but property of such institutions which is rented wholly or in part and the rents, issues and profits only used by such institutions shall not be exempt from taxation, nor shall any property held by them as an investment or for speculation be exempt from taxation: Provided, that this section shall not be construed to apply to the lower stories of charitable or benevolent institutions, necessarily using the upper stories of their lodge rooms and who rent the ground floor of such buildings, using said rents, issues and profits for the benefit of such charitable and benevolent purposes, or to the ground floor of public libraries, the rents, issues and profits of said ground floor being used for the benefit of said libraries."

"Fourth.—All houses of public worship and the lots on which they are situated, and all pews or steps and furniture therein, every parsonage and all burying grounds not owned or held by individuals or corporations for speculative purposes, tombs and right of burial; but any building being a house of worship which shall be rented or hired for any other purpose except for schools or places of worship, shall be taxed the same as any other property."

"906.—All property held by any religious society shall be assessed, and taxed, in the county where the property is situated, unless exempt by law."

November 21, 1935.

DISABLED VETERANS' EXEMPTION UNDER CHAPTER 17476, ACTS
OF 1935, APPLICABLE TO OCCUPATIONAL LICENSE TAXES
REQUIRED UNDER CHAPTER 17257, ACTS OF 1935

Dear Sir:

I have your letter of November 21, in which you request my opinion as to whether or not the exemption from occupational license taxes given by Chapter 17476, Laws of Florida, Acts of 1935, to disabled veterans applies to occupational licenses required to operate coin-operated devices under Chapter 17257, Laws of Florida, Acts of 1935.

It is my opinion that the exemption from occupational license taxes granted to disabled veterans by Chapter 17476, *supra*, applies to the occupational license taxes imposed by Chapter 17257, *supra*.

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November 12, 1935.

PERSON ENTITLED TO HOMESTEAD EXEMPTION FROM 1935 TAXES MAY OBTAIN SAME AT ANY TIME UPON PROPER APPLICATION TO TAX COLLECTOR OR CLERK OF THE CIRCUIT COURT SO LONG AS TAX SALE CERTIFICATE REMAINS PROPERTY OF THE STATE (FORM FOR APPLICATION FOR EXEMPTION NOT PRESCRIBED UNDER CHAPTER 17,060, ACTS OF 1935)

Dear Sir:

I have your letter in which you request my opinion upon the following question:

If a person entitled to the benefit of the Homestead exemption from taxation under Section 7 of Article X of the State Constitution, failed to file with the County Assessor of Taxes in the County where the property is located his claim for exemption on or before July 1st, 1935, upon the form prescribed by the Comptroller, pursuant to Chapter 17,060, Laws of Florida, Acts of 1935, may he at any time after July 1st, 1935, claim and receive the benefit of the exemption?

You state that the form prescribed by you and furnished to the County Assessors of Taxes provided for the person claiming the exemption to give the information required by the form set out in Section 4 of Chapter 17,060, *supra*, together with other information; that the form furnished by you could have been and was used by most claimants in making application for the exemption; that you did not specifically prescribe a form pursuant to Chapter 17,060, *supra*, and that the form which you did prescribe was furnished to the County Assessors of Taxes prior to the time that Chapter 17,060, *supra*, became a law; that the County Assessors of Taxes were instructed to receive applications for exemptions on the form furnished by you and on any other form so long as the information contained therein was that required by Section 4 of Chapter 17,060, *supra*.

It is my opinion that any person entitled to the benefit of the Homestead exemption for the 1935 taxes, and who did not receive the exemption on the 1935 tax roll because of his failure to make application on the form above referred to, may make application to the Tax Collector and have the exemption allowed, or failing in this, he may make application to the Clerk of the Circuit Court and receive the benefit of the exemption so long as the tax sale certificate against the property is owned by the State. This is true because of the fact that the forms of application for exemption required by Section 4 of Chapter 17,060, *supra*, were not furnished to the County Assessors of Taxes and for this reason the persons entitled to the exemption were not afforded an opportunity to comply with Chapter 17,060, *supra*, which required the filing of the application for the exemption. The question was

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whether or not a particular piece of property is exempt from taxation is, of course, a question of fact. The owner of property who desires the benefit of the exemption for 1935 is required to make clear and convincing proof to the proper taxing official that the property was in fact the Homestead of the applicant on January 1st, A. D. 1935.

December 4, 1935.

**MOTION PICTURE STUDIOS AND PLANTS—EXEMPTION FROM
TAXATION—SECTION 14, ARTICLE IX, CONSTITUTION**

Dear Sir:

This acknowledges yours of the 29th of November, together with letter under date of November 26th, addressed to you.

The facts presented are as follows: An individual owns property upon which he proposes to erect motion picture studios and/or plants, which will then in turn be leased to the motion picture production company for the purpose of making motion pictures.

The question presented is whether or not, under the provisions of Section 14 of Article IX, such property is exempt from ad valorem taxation.

You will note that under Section 14 of Article IX, the exemption is of "motion picture studios and plants which shall be established in this State on or after July 1, 1933, including all lands, buildings, and chattels utilized in connection therewith, ***."

It is, therefore, my opinion that such property as comes within the limitations of said Section 14 of Article IX, is exempt if owned by one individual and leased to another as above outlined.

December 11, 1935.

**MONEY RECEIVED UNDER WORLD WAR VETERANS ACT AND
AMENDMENTS THERETO NOT SUBJECT TO TAXATION UNDER
CHAPTER 15,789, ACTS OF 1931**

Dear Sir:

I have your letter in which you request my opinion upon the following question:

Is money paid by the United States Government under the World War Veterans Act, and amendments thereto, to a guardian and held by him as a deposit in a bank, subject to the terms and provisions of Chapter 15,789, Laws of Florida, Acts of 1931, generally referred to as the Florida Intangible Tax Law?

EXEMPTIONS

By the World War Veterans Act,

"The compensation, insurance, and maintenance and support allowance payable under Parts II, III, and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Parts II, III, or IV; and shall be exempt from all taxation."

Act of June 7, 1924, Ch. 320, Para. 22; 43 Stat. at L. 613, U.S.C.A. Title 38, Section 454; also U.S.C.A. Title 38, Section 618.

It is my opinion that under the terms and provisions of the above quoted part of the Federal Statute, money paid by the United States Government under the World War Veterans Act, and amendments thereto, to a guardian and held by him as a deposit in a bank, is exempt from the terms and provisions of Chapter 15,789, *supra*, and the guardian is not required to make a return of it as Intangible Personal Property to the County Assessor of Taxes. *Raburn versus Board of Commissioners of McIntosh County* (Okla. 1934) 31 Pac. (2d) 840.

January 20, 1936.

MARRIED WOMAN WHOSE HUSBAND IS RESIDENT OF ANOTHER
STATE, MAY CLAIM HOMESTEAD EXEMPTION IN FLORIDA
UNDER CERTAIN CONDITIONS

Dear Sir:

I have your letter of January 15th, in which you request my opinion upon the question of whether or not a married woman who owns property in Florida, may become a resident of the State and obtain the benefits of exemption from taxation under Section 7 of Article X of the Constitution, commonly referred to as the Homestead Exemption Amendment, although her husband is a citizen and resident of New York State.

There can only be one *head of a family*, and in case of a husband and wife constituting the family, the husband would be the head of the family. If the wife does not reside with her husband in New York, and she comes to Florida for the purpose of becoming a citizen and resident of the State, and therefore of setting up and maintaining a separate and independence residence from that of her husband, she may by complying with our laws become a citizen and resident of this State.

Any person who is a citizen of and resides in this State and who is the *head of a family*, is entitled to have the Homestead exempted from all taxation other than special assessments for benefits up to the valuation of Five Thousand Dollars.

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It is my opinion that if a married woman whose husband is a citizen and resident of New York, becomes a citizen and resident of Florida as above set out, and actually becomes the *head of a family*, which family resides with her in her Florida home, she will be entitled to the benefits of the Homestead Exemption from taxation as provided by Section 7 of Article X of the State Constitution.

January 20, 1936.

CONDITIONS UNDER WHICH LESSEE STOCKHOLDER OF
CORPORATION OWNING APARTMENT HOUSE ENTITLED
TO HOMESTEAD EXEMPTION.

Dear Sir:

I have your letter in which you recite the following facts:

A corporation owns an apartment building and property upon which the building is located, which consists of several apartments or units. This is the only property owned by the corporation. The stock of the corporation is owned by persons who have leases upon and who live in the apartments, and the stock ownership of each stockholder tenant represents the value of the apartment in which he lives. Most of the lessee stockholders are heads of families and are citizens of Florida, and are otherwise entitled to the benefits of the tax exemption granted by Section 7 of Article X of the Constitution, generally referred to as the Homestead Exemption Amendment.

The corporation and the lessee stockholders now propose to execute and record in the office of the Clerk of the Circuit Court of the county in which the property is located, an instrument showing the interest of each lessee stockholder. You request my opinion as to whether the lessee stockholder, who is the head of a family and who is a citizen of Florida, and who resides in one of the apartments as his bona fide home, is entitled to an exemption from taxation upon his interest in the apartment building and property up to the valuation of Five Thousand Dollars.

The Homestead Exemption Amendment to the Constitution should in my opinion receive a liberal construction, so that the intention of the people in adopting it will be given effect. The legislature of 1935 enacted Chapter 17060 for the purpose of providing an orderly method of procedure for administering the law, and to give expression to the view that the Amendment should be liberally construed.

In Section 2 of this Act the Legislature, however, limited the granting of the exemptions as follows:

"But no such exemption of more than Five Thousand Dollars shall be allowed to any one person or on any single parcel

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of real property, nor shall the amount of the exemption allowed any person exceed the proportionate assessed valuation based upon the interest owned by such person."

This provision of the law limits the total exemption to \$5,000.00 "on any single parcel of real property". The single parcel of real property referred to is the property upon which the homestead is located, and cannot exceed 160 acres outside of the town or city and one-half acre within the town or city.

The maximum amount of the exemption "on any single parcel of real property" is \$5,000 assessed value. This \$5,000 should be allocated to each lessee stockholder in proportion to his interest in the apartment building and property, provided, of course, that there is of record in the office of the Clerk of the Circuit Court an instrument by and under which the title is claimed.

It is my opinion that each lessee stockholder who is the head of a family and who is a citizen of Florida and resides in one of the apartments with his family on January 1st, is entitled to an exemption from taxation in an amount which his interest in the apartment and property of the corporation bears to the maximum exemption of the entire property which is \$5,000.

In other words, the amount of exemption to which such a lessee stockholder is entitled is that part of the \$5,000.00 maximum exemption which would be allocated to him in proportion to his interest in the apartment building and property.

February 15, 1936.

PERSON CLAIMING EXEMPTION UNDER SECTION 7, ARTICLE X
OF STATE CONSTITUTION, OF LIFE INTEREST MUST SHOW
THAT INSTRUMENT CREATING INTEREST IS OF RECORD
IN OFFICE OF CLERK OF CIRCUIT COURT OR OFFICE
OF COUNTY JUDGE IN COUNTY WHERE
PROPERTY LIES

Dear Sir:

I have your letters requesting my opinion upon the following questions:

1. Is a person who is a citizen and resident of Florida and who resides upon the property and makes it his home, but who has only an unrecorded life estate therein, entitled to the benefit of tax exemption, as to his interest, granted by Section 7 of Article X of the State Constitution, generally referred to as the Homestead Exemption Amendment?

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2. Is a widow, who is a citizen of Florida and resides upon the property as her home, but who has only a life estate therein by virtue of a deed recorded in the public records of the County where the property is located, entitled to the benefit of tax exemption, as to her interest, granted by Section 7 of Article X of the State Constitution, generally referred to as the Homestead Exemption Amendment?

3. Is a person who is a citizen of Florida and resides upon the property as his home, but who has only a life estate therein by virtue of a Will, which Will has been probated, or admitted to record in the County where the property is located, entitled to the benefit of tax exemption, as to his interest, granted by Section 7 of Article X of the State Constitution, generally referred to as the Homestead Exemption Amendment.

Section 2 of Chapter 17,060, Laws of Florida, Acts of 1935, regulates the allowance of exemption of homesteads from taxation and prescribes the duties of County and City officials and taxpayers with reference thereto. Section 2 reads in part as follows:

"Every person who is a citizen and resident of the State of Florida and who has the legal or beneficial title in equity to real property in the State of Florida, including vendees in possession under bona fide contracts to purchase and *such instruments by and under which such title is claimed are recorded with the Clerk of the Circuit Court of the County in which said homestead property lies* and who resides thereon and in good faith makes the same his or her permanent home shall be deemed to be the head of a family and entitled to an exemption from all taxation, except for special assessments for benefits, up to the assessed valuation of Five Thousand Dollars on said homestead. *The said exemption shall extend to widows having such title, or who reside on said property by virtue of dower or who have an estate therein limited in time by deed, will, jointure or settlement, or otherwise, and to widowers and other single persons who make their home upon property to which they have the legal or equitable beneficial title.*" (Emphasis supplied).

Under the quoted part of Section 2 of Chapter 17,060, *supra*, the person claiming the benefit of the exemption must, in addition to other things, show that there is of record in the office of the Clerk of the Circuit Court in the County where the property lies an instrument by and under which his title is claimed, or that there is of record in the office of the County Judge in the County where the property lies a Will under which legal or equitable beneficial title is claimed.

Based upon the foregoing, it is my opinion:

1. That your first question must be answered in the negative because the life interest claimed in the property is not evidenced by an

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instrument recorded in the office of the Clerk of the Circuit Court of the County in which the property lies, nor is there of record in the office of the County Judge in the County where the property lies a Will creating the life interest.

2. That your second question must be answered in the affirmative because the widow claims a life interest by virtue of a deed which is recorded in the County where the property lies.

3. That your third question must be answered in the affirmative because the life interest is claimed by virtue of a Will which has been duly probated, of admitted to record, in the County where the property lies.

February 25, 1936.

**ALIEN NOT ENTITLED TO BENEFIT OF HOMESTEAD EXEMPTION
UNDER SECTION 7 OF ARTICLE X OF STATE CONSTITUTION**

Dear Sir:

I have your letter in which you request my opinion upon the following question:

Is a person who is otherwise qualified to receive the benefits of Section 7 of Article X of the State Constitution, generally referred to as the Homestead Exemption Amendment, but who is a British subject, entitled to the tax exemption granted by the Amendment?

Your question was answered in the negative by Question XII of my opinion to you of January 10, 1935. Since that opinion was written the Supreme Court, in the case of *Steuart vs. State ex rel. Dolcimascolo*, April 23, 1935, reported in 161 So. 378, held that:

"residents of the State of Florida who are aliens and not citizens of the United States are not included within the terms or the intendments of section 7 of article 10 of the Constitution adopted in 1934, providing that 'There shall be exempted from all taxation, other than special assessments for benefits, to every head of a family who is a citizen of and resides in the State of Florida, the homestead as defined in Article X of the Constitution of the State of Florida.'"

Reaffirming my former opinion of January 10, 1935, it is my opinion that a person who is otherwise qualified to receive the benefits of Section 7 of Article X of the State Constitution but who is a British subject is not entitled to the tax exemption granted by the Amendment. This opinion applies not only to British subjects but to all aliens.

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March 17, 1936.

TAXATION—PERSON HAVING UNRECORDED CONTRACT TO PURCHASE PROPERTY NOT ENTITLED TO HOMESTEAD EXEMPTION UNDER SECTION 7, ARTICLE X, OF THE STATE CONSTITUTION

Dear Sir:

I have your letter in which you request my opinion upon the following question:

Is a person who is a citizen and resident of Florida, and who is the head of a family, and who resides upon the property with his family and makes it his home, but who has an unrecorded contract to purchase the property, entitled to the benefit of tax exemption as to his interest, granted by Section 7 of Article X of the State Constitution, generally referred to as the Homestead Exemption Amendment?

Section 2 of Chapter 17,060, Laws of Florida, Acts of 1935, regulates the allowance of exemption of homesteads from taxation and prescribes the duties of County and City officials and taxpayers with reference thereto. Section 2 reads in part as follows:

"Every person who is a citizen and resident of the State of Florida and who has the legal or beneficial title in equity to real property in the State of Florida, including vendees in possession under bona fide contracts to purchase and such instruments by and under which such title is claimed are recorded with the Clerk of the Circuit Court of the County in which said homestead property lies and who resides thereon and in good faith makes the same his or her permanent home shall be deemed to be the head of a family and entitled to an exemption from all taxation, except for special assessments for benefits, up to the assessed valuation of Five Thousand Dollars on said homestead. The said exemption shall extend to widows having such title, or who reside on said property by virtue of dower or who have an estate therein limited in time by deed, will, jointure or settlement, or otherwise, and to widowers and other single persons who make their home upon property to which they have the legal or equitable beneficial title." (Emphasis supplied).

Under the quoted part of Section 2 of Chapter 17,060, *supra*, the person claiming the benefit of the exemption must, in addition to other things, show that there is of record in the office of the Clerk of the Circuit Court in the County where the property lies, an instrument by and under which his title is claimed, or that there is of record in the office of the County Judge in the County where the property lies a will under which legal or equitable beneficial title is claimed.

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of the Homestead Exemption because the contract under which he claims an interest in the property is not recorded in the office of the Clerk of the Circuit Court in the County in which the property lies. (See Opinion to you of February 15, 1936.)

April 17, 1936.

**TAXATION—PROPERTY LEASED TO INDUSTRIAL PLANT NOT
SUBJECT TO EXEMPTION**

Dear Sir:

This is in reply to your inquiry as to whether or not Section 12, Article IX, of the Florida Constitution as Amended, exempts leased property used and occupied by industrial plants therein specified.

It is my opinion that the exemption does not apply to leased property but applies only to property owned and used by such industrial plants. It is apparent from the second paragraph of said Section 12, Article IX, as amended, that this is the proper construction to be given said constitutional provision. The words "The exemption herein authorized shall not apply to real estate owned and used by such industrial plants except" clearly indicate that the constitutional exemption applies only to real estate owned and used by such industrial plants as come within the exception stated.

This view is in harmony with the principles involved in my opinion under date of July 25, 1933, involving the exemption of property from taxation which is leased but not owned by an educational institution occupied by it solely for educational purposes. This view is also in harmony with the principles announced by the Supreme Court of Florida in the case of Jefferson Standard Life Insurance Company vs. City of Wildwood, reported in Volume 160 Southern Reporter, page 208.

June 10, 1936.

**TAXATION—HOMESTEAD EXEMPTION—PROPERTY OWNED
JOINTLY BY HUSBAND AND WIFE, THE HUSBAND
BEING AN ALIEN**

Dear Sir:

This is in reply to your letter of June 4, enclosing copy of letter from the Tax Assessor of Dade County.

You inquire to what extent, if any, property occupied as a home by a married woman, citizen of Florida, who is residing with her alien husband, can participate in the exemption from taxation provided by Article X, Section 7, of the Florida Constitution as amended. You

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state that the property is owned jointly by the husband and wife. The enclosed letter indicates that the wife is the owner of securities which provide for the support of the family.

It has been definitely decided by the Florida Supreme Court, in the case of *Steuart vs. State*, 161 So. 378, that an alien head of a family is not entitled to the tax exemption provided by the constitutional provision hereinabove referred to. It is clear, therefore, that if the husband is in fact the head of the family, he is not entitled to the exemption.

Sufficient facts are not stated to permit me to determine whether or not the wife in this particular case would be the head of the family. The Supreme Court of Florida has never passed upon the question of whether a wife becomes the head of the family by reason of the fact that she supports the family with her private income. The definition of what constitutes the head of the family within the meaning of the constitutional exemption set forth in Chapter 17060, Acts of 1935, does not exactly fit the situation here presented. It is my opinion that if the facts actually disclose that the wife is the head of the family she will then be entitled to apply for and receive the benefits of the exemption from taxation. If, on the other hand, the facts disclose that she is not actually the head of the family, then she is not entitled to apply for or receive any of the benefits of the exemption.

The Tax Assessor of Dade County, in the enclosed letter, seems to be of the opinion that the interests of the husband and wife can be separated for the purpose of applying the provisions of the Constitution relating to homestead exemptions. This is not the case, because the joint ownership of the husband and wife would constitute a single separate estate, known as an estate by the entirety. This estate is not capable of being divided. The exemption would have to be granted or disallowed as to the entire joint estate.

In the absence of further facts to establish the fact that the wife is actually the head of the family, it is my opinion that the exemption should be disallowed, in view of the following language contained in the opinion of the Supreme Court in the case hereinbefore mentioned:

"Exemptions from taxation, whether stated in the Constitution or in statutes, are to be construed against the claimant and in favor of the taxing power in cases of doubt. *Rast v. Hulvey*, 77 Fla. 74, 80 So. 750. Therefore, a claim for exemption under section 7 of article 10 of the Constitution is not allowable unless such claim is sustainable under the precise language of that section, which language no department of the state government, whether judicial, legislative, or executive, has authority to amend, add to, detract from, or alter, in favor of or against claimants not strictly entitled, or debarred, under the words of the Constitution itself."

EXEMPTIONS

August 4, 1936.

TAXATION—EXEMPTION OF PROPERTY UNDER SECTION 12,
ARTICLE IX OF FLORIDA CONSTITUTION AS AMENDED—
PROPERTY ON LEASED PREMISES*Dear Sir:*

Under date of April 17, 1936, I furnished you my written opinion to the effect that Section 12, Article IX of the Florida Constitution as Amended does not exempt from taxation leased property used and occupied by the industrial plants therein specified.

You now inquired whether improvements erected on said leased property by such industrial plants with the express understanding that said improvements may be removed by the lessee at the termination of the lease are subject to taxation or are exempt under said constitutional provision. It is my opinion that said improvements are exempt from taxation when the right is expressly reserved in the lease to remove same at the termination of the lease or when the lease otherwise shows on its face that as between the parties thereto the improvements do not become a part of the real estate. See 26 Corpus Juris, page 710, and authorities cited therein.

September 24, 1936.

TAXATION—FLORIDA FOREST SERVICE—GASOLINE EXEMPTION
ON TRUCKS AND TRACTORS OPERATED EXCLUSIVELY ON
FEDERAL AND STATE FUNDS*Dear Sir:*

This is in reply to your letter of September 9, in which you request my opinion as to whether the State Board of Forestry is exempt from payment of the state gasoline tax in certain instances outlined specifically by you.

In the instances outlined by you in which the trucks and tractors are operated wholly from federal and state funds, it is my opinion that the State Board of Forestry is exempt from payment of the state gasoline tax. In the instances, however, when the trucks or tractors are operated on private lands for which there are assessment charges against the individual land owners, this exemption would not apply. My opinion of September 2, 1932, reported in the Biennial Report of the Attorney General for 1931-32, page 1035 thereof, to the effect that the State Forestry Board was not exempt from the gasoline tax was based on the fact that assessment charges were made and collected against individual land owners.

EXEMPTIONS

October 29, 1935.

**TAXATION—LICENSES—EXEMPTION—ALIEN WORLD WAR
VETERAN***Dear Sir:*

I have your letter of the 24th inst., making inquiry as to whether an American citizen—a disabled veteran having served in the English Army during the World War—is entitled to an exemption on license taxes under Chapter 17,476, Acts of 1935.

By reference to said Act you will note that to be entitled to the exemption one must be a bona fide permanent resident elector of the State of Florida and must have served in the United States army, navy or marine corp in the World War or the Spanish-American War and honorably discharged therefrom as well as being disabled to perform manual labor. Unless one has the qualifications mentioned in the statute he would not be entitled under the law to the exemption provided thereby.

April 10, 1936.

**UNDER ACT OF THE CONGRESS OF MARCH 20, 1936, SHARES OF
PREFERRED STOCK ISSUED BY NATIONAL OR STATE BANKS
WHEN OWNED BY R. F. C. EXEMPT FROM INTANGIBLE
TAXATION***Dear Sir:*

On February 10, 1936, I wrote you an opinion to the effect that shares of preferred stock issued by National banks when owned by the Reconstruction Finance Corporation were subject to the Florida Intangible Tax Law (Chapter 15,789, Laws of Florida, Acts of 1931).

An Act of the Congress approved March 20, 1936, reads in part as follows:

“Notwithstanding any other provision of law or any privilege or consent to tax expressly or impliedly granted thereby, the shares of preferred stock of national banking associations, and the shares of preferred stock, capital notes, and debentures of State banks and trust companies, heretofore or hereafter acquired by Reconstruction Finance Corporation, and the dividends or interest derived therefrom by the Reconstruction Finance Corporation, shall not, so long as Reconstruction Finance Corporation shall continue to own the same, be subject to any taxation by the United States, by any Territory, dependency, or possession thereof, or the District of Columbia, or by any State, county, municipality, or local taxing authority, whether now,

EXEMPTIONS

heretofore, or hereafter imposed, levied, or assessed, and whether for a past, present, or future taxing period."

In view of the above referred to Act of the Congress specifically exempting from all taxation the shares of preferred stock issued by National or State banks when such shares are owned by the Reconstruction Finance Corporation, you will please consider my opinion of February 10, 1936, as recalled. I suggest that you notify all of the County Tax Assessors so that they will not assess such exempted shares of stock on the 1936 Intangible Tax Rolls.

January 24, 1935.

**PROPERTY OWNED BY MUNICIPALITY AND LEASED TO COUNTY
AND USED AS A SITE FOR A COURT HOUSE AND JAIL
EXEMPT FROM TAXATION**

Dear Sir:

This will acknowledge receipt of your letter of January 21st, to which is attached a copy of a letter from Honorable_____, County Assessor of Taxes of Martin County. I quote the following from the letter of Mr._____:

"The building being used as a Court House in this County is a former city school building and is owned by the City of Stuart. Also the Grounds (in rear of Court House) upon which the jail is built is owned by the City of Stuart.

"The County pays to the City a monthly rental for the use of the building and grounds, just as any individual would have to do. * * * * *

"This property has been exempted from taxes since the formation of the County."

You request my opinion as to whether or not this property is exempt from taxation.

Section 897, Compiled General Laws of Florida, 1927, exempts from taxation:

"All public property of the several counties, cities, villages, towns and school districts in this State, used or intended for public purposes, including both real and personal property of all fire, hose and hook and ladder companies, except lands sold for taxes for the use of any counties, cities, villages, towns or school districts."

Under our Constitution and laws, all property is subject to taxation unless specifically exempted therefrom. The Supreme Court of our

EXEMPTIONS

State has adopted a strict rule of construction in reference to the exemption of property from taxation. Rast, Tax Collector of Duval County, versus Hulvey, 77 Fla. 74, 80 So. 750.

"In respect to taxation of cities, however, the rule is otherwise. Inasmuch as taxation of public property would necessarily involve other taxation for the payment of taxes so laid, such property is usually excluded by implication from the operation of laws imposing general taxes, unless there is a clear intent to include it. * * * * In this respect our statute, section 897, Comp. Gen. Laws 1927, in so far as it relates to cities and counties, is largely declaratory of the general rule independent of statute."

ORANGE STATE OIL CO. vs. AMOS
130 So. 707.

It is my opinion that under Section 897, supra, this property is exempt from taxation as it is the property of the City of Stuart and is being used for a public purpose by a political division of the State, to-wit, Martin County.

January 22, 1935.

TAXATION, EXEMPTIONS

Dear Sir:

Your telegram STOP If a person who is entitled to the benefit of Section Seven of Article Ten of the Constitution known as Homestead Exemption Amendment is also entitled to exemption as Ex Service man under Section Nine of Article Nine of the Constitution and Chapter Sixteen Two Ninety Eight Acts of Nineteen Thirty Three he may take exemption as Ex Service man on homestead property wherever located in this State or he may take exemption on other property owned by him wherever located in this State STOP If entitled to both exemptions on January First he may receive benefit of both exemptions in the same year.

January 10, 1935.

**TAXATION—APPLICATION OF SECTION 7 OF ARTICLE X OF THE
STATE CONSTITUTION—EXEMPTION OF HOMESTEADS
FROM TAXATION**

Dear Sir:

I have your communication, together with a list of questions concerning the application of Section 7 of Article X of the State Constitu-

EXEMPTIONS

tion, generally referred to as the "Homestead Exemption Amendment".

I give below the questions asked by you, together with my answers thereto:

Section 7 of Article X of the State Constitution reads as follows:

"There shall be exempted from all taxation, other than special assessments for benefits, to every head of a family who is a citizen of and resides in the State of Florida, the homestead as defined in Article 10 of the Constitution of the State of Florida up to the valuation of \$5,000.00; provided, however, that the title to said homestead may be vested in such head of a family or in his lawful wife residing upon such homestead or in both."

Section 1 of Article X of the State Constitution reads as follows:

"A homestead to the extent of one hundred and sixty acres of land, or the half of one acre within the limits of any incorporated City or Town, owned by the head of a family residing in this State, together with one thousand dollars' worth of personal property, and the improvements on the real estate, shall be exempt from forced sale under process of any court, and the real estate shall not be alienable without the joint consent of husband and wife, when that relation exists. But no property shall be exempt from sale for taxes or assessments, or for the payment of obligations contracted for the purchase of said property, or for the erection or repair of improvements on the real estate exempted, or for house, field or other labor performed on the same. The exemption herein provided for in a City or Town shall not extend to more improvements or buildings than the residence and business house of the owner; and no judgment or decree or execution shall be a lien upon exempted property except as provided in this article."

I.

Does "homestead" as used in this Amendment, apply only to real estate or may it also include personal property?

The word "homestead" as it appears in Section 7 of Article X of the Constitution of 1885 applies only to "**** one hundred and sixty acres of land, or the half of one acre within the limits of any incorporated City or Town**** and the improvements on the real estate****" and does not apply to personal property. See Section 1 of Article X of the Constitution.

**PROPERTY IN INCORPORATED CITY OR TOWN TO WHICH
EXEMPTION SHALL APPLY. MEANING OF RESIDENCE
AND BUSINESS HOUSE OF OWNER**

"*****the half of one acre within the limits of any incorporated City or Town, *****and the improvements on the real estate *****. The exemption herein provided for in a City or Town shall not extend

EXEMPTIONS

to more improvements or buildings than the residence and business house of the owner****." Section 1 of Article X of the Constitution.

All answers under Nos. II through VI assume that the homestead is located within an incorporated City or Town and does not include more than a half acre of land.

II.

Where all the improvements upon an half acre or less, in an incorporated City, are rental properties, what improvements other than the actual residence may be exempted?

If property owned in a City is under half acre, but is made up of several buildings, one of which is used for a homestead and the balance rented, is the property eligible for an exemption, and if so, is all the property eligible up to \$5000., or just what portion of the value used for a homestead?

If residing on the premises constitutes a homestead, then is the first \$5000. value of all properties where the owner actually resides thereon, eligible for an exemption, such as a duplex, apartment building, or small hotel?

When the head of a family, who is a citizen of and resides in Florida, owns one-half acre or less land in an incorporated City or Town which is his homestead, and has thereon his residence and other improvements, (in the same building or separate buildings which he rents) he is entitled to have the Tax Assessor consider the value of his residence and the land upon which it is located in determining his exemption, and if it appears that the rental property is being used (the rents therefrom) as a means of making the owner's livelihood, then such property should be considered by the Tax Assessor as a part of the homestead which is exempt up to the valuation of \$5,000.00. Cowdery versus Herring, 143 So. 433.

III.

Are buildings of all kinds, used in part by the owner as a residence, exempt?

Buildings of all kinds used in part by the head of a family, who is a citizen of and resides in Florida, as his residence, are to be considered as his homestead if the part not actually occupied as his residence or as his place of business is rented and the rents therefrom are used as a means of making the owner's livelihood. Cowdery versus Herring, *supra*.

IV.

Is a hotel in which the owner resides with his family exempt?

If the head of a family, who is a citizen of and a resident of Florida, owns a hotel building and resides therein with his family and uses

EXEMPTIONS

it as his home and operates it, the Assessor should consider the value of the land and the building in determining the amount of the exemption. If the owner lives in the hotel building but does not operate the hotel but uses the rents therefrom as a means of making his livelihood, then the Assessor must consider the value of the land and the building in determining the amount of the exemption. Cowdery versus Herring, *supra*.

V.

Is the owner of an apartment building entitled to exemption only upon the apartment in which he resides or is it applicable to the entire building?

If the head of a family, who is a citizen of and resides in Florida, owns an apartment building consisting of more than one apartment and resides with his family in one apartment and operates the apartment building as his business, then the Assessor should consider the land and the entire building in determining the amount of the exemption. If the owner resides in one apartment and does not operate the building as his business but leases or rents the same but uses the rents therefrom as a means of making his livelihood, then the Assessor must consider the value of the land and the entire building in determining the amount of the exemption. Cowdery versus Herring, *supra*.

Is "business house" as used in Section 1, Article 10, limited to a store, office, shop or other building occupied and used by the owner as a place of business, or are properties of this kind exempted when rented and occupied by one other than the owner?

The words "business house" as used in Section 1 of Article X of the State Constitution, may be, under certain circumstances, limited to a store, office, shop or a building occupied and used by the owner as a place of business. On the other hand, if the owner uses a part of the building as his "business house" and rents the other part or parts of the building, such as offices or stores, but uses the rents therefrom as a means of making his livelihood, then the value of the land and the entire building must be considered by the Assessor in determining the amount of the exemption. Cowdery versus Herring, *supra*.

PROPERTY LOCATED OUTSIDE OF INCORPORATED CITY OR TOWN TO WHICH EXEMPTION SHALL APPLY

"A homestead to the extent of one hundred and sixty acres of land, **** and the improvements on the real estate *****" shall be considered in determining the amount of the exemption. Section 1 of Article X of the State Constitution.

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VII.

Is the entire 160 acre homestead entitled to the exemption up to \$5000.00 although it may have located on it improvements which are being rented?

The head of a family, who is a citizen of and resides in Florida with his family, is entitled to a homestead of one hundred and sixty acres of land and the improvements thereon where the property is located outside of an incorporated City or Town, and the property with the improvements thereon is exempt from taxation up to the valuation of \$5000.00, although there may be improvements on the property, other than the actual residence and "business house" of the owner, which are rented. *Armour & Company versus Hulvey*, 73 Fla. 294, 74 So. 212; *Anderson, etc., versus Clements*, 101 Fla. 523, 134 So. 588; *Fort versus Rigdon*, 100 Fla. 398, 129 So. 847.

VIII.

Is a person residing in an unincorporated Town entitled to exemption on all real estate up to 160 acres which lies contiguous to his residence, although parts of it may be separated by roads and streets?

"The Constitution does not expressly require contiguity of lands for the exemptions of a homestead, and as the meaning of the word 'homestead' is not defined in the organic provision on the subject, the question whether actual contiguity is required must be determined in each case on its particular facts." *Clark, Sheriff, et al. versus Cox, et al.*, 80 Fla. 63, 85 So. 173.

Where the homestead is outside of an incorporated City or Town, it may contain one hundred and sixty acres together with the improvements thereon. If some parts of the one hundred and sixty acres are separated from the part where the residence is located by streets or roads, the parts so separated do not lose their homestead character if they continue to be actually and exclusively used as parts of the home place for homestead purposes and for the support of the family. *Clark versus Cox, supra*.

OWNERSHIP OF HOMESTEAD

"**** the title to said homestead may be vested in such head of a family or in his lawful wife residing upon such homestead or in both." Section 7 of Article X of the State Constitution.

IX.

Is the homestead, jointly owned by two or more brothers or sisters through the law of descent and who live together, subject to the exemption?

EXEMPTIONS

If two or more brothers or sisters reside on property which was a homestead at the time they became the owners through inheritance, the property, up to the value of \$5000, will be exempt *provided that they live together in the relation of one family* and one of them is actually the head of the family, i.e., one of the members of the group has the responsibility of supporting and the general care and charge of the other members of the group. *Johns versus Bowden*, 68 Fla. 32, 66 So. 155. (Section 2 of Article X does not apply).

X.

Can real estate, the title to which is in a co-partnership, be exempted to the extent of 160 acres or less for each co-partner if such co-partner resides on different 160 acre tracts or less?

Property owned by a partnership cannot receive the benefit of the exemption. *State versus Bowden*, 18 Fla. 17.

XI.

Is "title" as used in this Amendment limited to absolute or is it also applicable to "sales contracts" or other conditional titles?

The word "title" as used in Section 7 of Article X is broad enough to include any beneficial interest in land which may be the homestead. The *interest* of the head of a family, who is a citizen of and resides in Florida with his family, on the homestead property, (and this interest may be in the head of a family or his lawful wife residing upon such homestead, or in both) may be represented by the entire title or by a contract for the purchase of the land or by an undivided interest in the land such as a tenancy in common, and his interest therein, up to the valuation of \$5,000, is exempt. *Adams versus Clark*, 48 Fla. 205, 37 So. 734; *Armour & Company versus Hulvey*, *supra*; *Pasco versus Harley*, 73 Fla. 819, 75 So. 30; *Hill versus First National Bank of Marianna*, 73 Fla. 1092, 75 So. 614.

XII.

Is the homestead, the title to which is in the wife but who married a foreigner exempt?

The exemption is confined to the "head of a family who is a citizen of and resides in the State of Florida". Section 7 of Article X of the State Constitution. A person who is not a *citizen of Florida* cannot receive the benefit of the exemption, although he married a citizen of Florida and is now the head of a family and resides with his family in Florida upon property the title to which is in the name of his wife.

EXEMPTIONS

FAMILY—HEAD OF A FAMILY

XIII.

Who is considered the "head of a family"?

Under what circumstances may an unmarried person be the "head of a family"?

"According to the holding in the case of *Johns v. Bowden*, 68 Fla. 32, 66 So. 155, 159, *supra*, to constitute a 'head of a family' there must be at least two persons who live together in the relation of one family, and one of them must be 'the head' of that 'family'."

Jordan et al. v. Jordan et al.
100 Fla. 1586, 132 So. 466.

When the natural relation of husband and wife, or parent and child, or that of being in loco parentis does not exist, the relation should be one in which an established and continuing personal authority, responsibility and obligation actually rests upon one as "the head of a family" for the welfare of the members of the group who in law should, or in fact do, recognize and observe a family relationship to the one who acts as "the head of the family". *Johns v. Bowden, supra*; *Davis v. Miami Beach Bank, etc.* 99 Fla. 1282, 128 So. 817.

XIV.

Where the family consists only of husband and wife, and they become separated through death or other causes, is the homestead still exempt?

If a family consists only of the husband and wife and one of them dies, or if they are separated and discontinue to maintain a home, the property owned by either or both of them, and occupied as a homestead will not be entitled to the benefit of the exemption for the reason that it will have lost its character as a "homestead". *Herrin v. Brown*, 44 Fla. 782, 33 So. 522; *Mathews v. Jaecle*, 61 So. 686, 55 So. 865; *Jordan v. Jordan, supra*.

XV.

What dependents shall be considered in determining whether a person is "the head of a family"?

A person may be considered as "the head of a family" if he has depending upon him any or all of the following classes: a wife; child or children; or any other person or persons where the relation is that of established and continuing personal authority, responsibility and obligation actually resting upon one as "the head of a family" for the welfare of such person or persons who in law should, or in fact do,

EXEMPTIONS

recognize and observe a family relation to the one acting as "the head of a family". *Johns v. Bowden, supra*; *Davis v. Miami Beach Bank, etc., supra*.

RESIDENCE

Where a resident resides on the property part of the time but rents it for the season, is the property still eligible for an exemption?

Property does not lose its homestead character because the owner and his family move off of the property and rent it for a part or season of the year and then move back upon the property, *provided* the absence from the property was temporary and there was no intention of abandoning it as a homestead. *Murphy v. Farquhar, 39 Fla. 350, 22 So. 681*; *Mathews v. Jaecle, supra*; *Lanier v. Lanier, 95 Fla. 522, 116 So. 867*.

XVI.

Is actual residence upon the homestead required to have it exempt?

Property can only acquire a homestead character by the head of a family, who is a citizen of Florida, residing thereon with his family. The homestead intended to receive the benefit of the exemption is the place of actual residence of a citizen of Florida, who is the head of a family, and his family. A temporary absence from the homestead of the head of a family and his family in search of health, pleasure or for business reasons, will not deprive the homestead of its character and status. *Murphy v. Farquhar, supra*; *Mathews v. Jaecle, supra*; *Lanier v. Lanier, supra*.

XVII.

Is the homestead of a citizen of Florida who is also the head of a family, but who is employed and lives with his family in another State, exempt?

The "homestead" in Florida of the head of a family who accepts employment in another State and temporarily removes himself and family from the "homestead" to the place where he is employed but who expects to return to the "homestead" with his family, and who does not intend to abandon his "homestead" in Florida, is entitled to the benefit of the exemption during the absence of himself and family from the "homestead" because this property remains a "homestead" and does not, by virtue of such absence, lose its character and status as a "homestead".

EXEMPTIONS

CITIZEN—NATURALIZED

XVIII.

In the application of this Act, is there any distinction between "naturalized" citizens and those born as citizens of the United States?

No distinction is made between a person who is a citizen of Florida (hence, a citizen of the United States) because of having been born in the United States and one who is a citizen because he has been naturalized. The exemption applies to the homestead of "every head of a family who is a citizen of and resides in the State of Florida". See Section 7 of Article X of the State Constitution.

DATE OF ACQUIRING HOMESTEADS

XIX.

Can the head of a family from another State acquire title to a homestead after January 1st and by establishing residence upon it, exempt it for that year?

Is it necessary that the applicant for an exemption be the owner on January 1st, the date of assessment for the year exemption is requested?

Taxes are assessed against property and the lien therefor accrues on January 1st of each year. See Sections 893 and 896, C.G.L. See also Sections 894 and 913, C.G.L. 1934 Supplement.

If property is not a homestead on January 1st, it cannot receive the benefit of the exemption for that year.

SPECIAL ASSESSMENTS FOR BENEFITS

XX.

What are Special Assessments for benefits?

Special Assessments for benefits proceed upon the theory that a local improvement confers upon neighboring property a special or peculiar benefit differing materially and substantially from the benefit flowing to the public generally. A.C.L. R.R. Co. v. Lakeland, 94 Fla. 347, 115 So. 669; Ft. Myers v. State, 95 Fla. 700 117 So. 97; Martin v. Dade Muck Land Company, 95 Fla. 530, 116 So. 449.

EXEMPTIONS

"Special or local assessments, whether in the form of ad valorem levies on property in a special taxing district, or otherwise, are not ordinary taxes levied for the purpose of sustaining the government, but are burdens in the form of taxation imposed by law upon real property for a public improvement, the extent of the burden being determined by the Legislature, or its duly authorized agency, with direct reference to such benefit as the property may receive therefrom, and in the ratio of the advantage accruing. *Taylor v. Palmer*, 31 Cal. 240; *Munson v. Board of Comm'rs*, 43 La. Ann. 15, 8 So. 906; *Rosewater, Special Assessment*, 85; 25 Am. & Eng. Encyc. Law (2nd Ed.) 1168."

Swanson et al. v. Therrell,
112 Fla. 474, 150 So. 634.

XXI.

Is a "homestead" in a taxing district which levies Special Assessments or taxes according to benefits for the payment of bonds and for the cost of maintenance, entitled to the benefit of the exemption?

A "homestead" located in a taxing district, which levies Special Assessments or taxes according to benefits for the payment of bonds and/or for the cost of maintenance, is not entitled to the benefit of the exemption under Section 7 of Article X of the State Constitution, as to taxes levied by such taxing district. Examples of such taxing districts are: drainage districts; flood control districts; navigation districts; road districts, where tax is based upon benefit secured. The taxes levied and assessed may be a specific assessment against each piece or parcel of property within the district, or they may be ad valorem taxes, so long as it is for the special benefit of the particular property as distinguished from the benefit accruing to the public generally. *Richardson v. Hardee*, 85 Fla. 510, 96 So. 290; *Smith Bros. v. Williams*, 100 Fla. 642, 126 So. 367; *State ex rel Logan v. Raulerson*, 113 Fla. 147, 151 So. 384.

XXII.

Are taxes levied by a County for publicity, welfare work, or agriculture, special benefits?

Taxes levied by a County for publicity, welfare work or agriculture are not Special Assessments for benefits as they are levied for general governmental purposes and not for the special benefit of any particular property in the County. *State ex rel Logan v. Raulerson*, *supra*.

XXIII.

Are Special Sub-school district taxes voted by the people of the district for maintenance, special benefits?

EXEMPTIONS

The "homestead" is exempt, up to the valuation of \$5000.00, (Section 7 of Article X of the Constitution) from taxes levied by a Special Tax School District for operation and maintenance of the schools within the district pursuant to Section 10 of Article XII of the Constitution, because such taxes are not levied and assessed according to any special or peculiar benefits to be received by the property of the district, differing materially and substantially from the benefits flowing to the public generally. *Swanson v. Therrell, supra; Bronson v. Board of Public Instruction*, 145 So. 833.

XXIV.

Are Special Road and Bridge District taxes levied for the express purpose of maintaining the roads in said district, special benefits?

The "homestead" is exempt, up to the valuation of \$5,000.00, (Section 7 of Article X of the Constitution) from taxes levied by a Special Road and Bridge District for maintaining the roads of the District, (organized under the General Laws. See Sections 2679-2699 and 2706-2714, C.G.L.) because such taxes are not levied and assessed according to any special or peculiar benefits to be received by the property of the District, differing materially and substantially from the benefits flowing to the public generally. *Swanson v. Therrell, supra; Bronson v. Board of Public Instruction*, 145 So. 833.

APPLYING FOR THE EXEMPTION

XXV.

When, and to whom, should a tax payer make application for the exemption? In what form shall the application be made and who will provide this form?

A person entitled to the benefit of the exemption, under Section 7 of Article X of the State Constitution, should make application therefor to the County Assessor of Taxes, on or before April 1st of each year, upon a form furnished him by the Assessor.

The County Assessor of Taxes is required to use the forms and pursue the instructions which may, from time to time, be transmitted to him by the Comptroller. Section 944, C.G.L. I am advised that the Comptroller will transmit immediately to each Assessor a form to be furnished by the Tax Assessor to each person desiring to make application for the benefit of the exemption.

EXEMPTIONS**XXVI.**

Where homesteads have escaped taxation for any or all years, 1932, 1933, 1934, can they now be assessed with taxes for these years on the 1935 roll and in case of delinquency will a lien attach?

Property which is now and was a "homestead" on January 1st, 1932, 1933, and 1934, or on January 1st of any of those years, and which escaped taxation for all or one or more of those years, may be assessed upon the 1935 tax roll for the year or years that it escaped taxation. See Sections 924 and 925, C.G.L. Section 7 of Article X of the State Constitution applies only to taxes accruing after this Section became a part of the Constitution in November A.D. 1934.

**BUILDINGS ON "HOMESTEAD" CONSIDERED AS PART
OF HOMESTEAD PROPERTY**

XXVII.

Are buildings constructed or completed after the date the Amendment passed exempt from debt requirement tax, or are all buildings subject to debt requirement that were completed prior to January 1st, 1935?

Are buildings constructed after January 1st, 1935, exempt from all debt requirement tax up to a valuation of \$5000?

Buildings, regardless of when constructed, which form a part of the homestead will be considered as a part of the homestead property in determining the benefit of the exemption under Section 7 of Article X, and such buildings will be subject to the same taxes as the property upon which they are constructed, *provided*, that buildings constructed after January 1st of any one year will not be considered in determining the value of the homestead property or the extent of the exemption for that year.

**PERSONS RECEIVING "HOMESTEAD" EXEMPTION NOT
DEPRIVED OF OTHER EXEMPTIONS**

XXVIII

In the event a home owner may be qualified to apply under the homestead exemption amendment and also under prior constitutional exemptions, will that party be entitled to both or only one be applicable and if only one, which one?

EXEMPTIONS

The fact that the owner of a "homestead" receives the benefit of Section 7 of Article X of the State Constitution, does not deprive him of any other exemption to which he may be entitled under the Constitution or the laws of the State.

HOMESTEAD NOT EXEMPT FROM TAXES LEVIED TO PAY INTEREST AND PRINCIPAL ON BONDS OUTSTANDING WHEN SECTION 7 OF ARTICLE X OF THE CONSTITUTION BECAME EFFECTIVE

XXIX.

Are homesteads, otherwise entitled to all the benefits of the exemption, still subject to taxation to pay interest and sinking fund requirements on bond issued authorized and sold prior to its adoption and refunding issues since its adoption?

The "homestead" does not receive the benefit of the exemption under Section 7 of Article X of the Constitution as to taxes levied for the purpose of paying interest and principal on bonds which were outstanding at the time this Section of the Constitution became effective (November 1934). This likewise applies to bonds issued and sold (either before or after the adoption of this Section of the Constitution) for the purpose of refunding the original bonds which were issued and sold before this Section of the Constitution was adopted. *Jeffe Boatwright v. City of Jacksonville, et al. (Fla.) Opinion, December 1, 1934.*

SECTION 9

DELINQUENT TAXES

August 1, 1935.

CANCELLATION OF TAX CERTIFICATE ON LANDS ACQUIRED BY
COUNTY OTHER THAN FOR PUBLIC PURPOSES NOT AUTHORIZED*Dear Sir:*

With your letter of July 11, 1935, you enclose copy of a resolution of the Board of County Commissioners of Hillsborough County, requesting your approval to the action of the Board in cancelling the county taxes for the years 1933 and 1934 on the property described in said resolution, and also requesting you to cancel the State's portion of the State taxes assessed against said property for the years 1933 and 1934, said land being described as Lot 107 of New Suburb Beautiful Subdivision, according to map or plat thereof, as the same appears recorded in Plat Book 10, page 18, of the Public Records of Hillsborough County, Florida.

It appears from the resolution that Hillsborough County acquired title to the said property December 20, 1932, by foreclosure of paving liens, and that the same was assessed for State and County taxes for the years 1933 and 1934. It also appears that on April 4, 1935, Hillsborough County sold said land to one Fred T. Warren of Tampa in Hillsborough County, Florida, and undertook to convey same free from State and County taxes.

Property owned by a county is exempt from taxation only when used or intended for public purposes. See second paragraph of Section 897, Compiled General Laws of Florida 1927. There is nothing in the Resolution to indicate that this land was so used or intended to be used by the county, and in the absence of such a showing, it would not be exempt from taxes, and you would be without authority to cancel the taxes assessed for the years 1933 and 1934.

The fact that the land was acquired by foreclosure of paving liens is strongly indicative of no purpose on the part of the county in acquiring same to put it to a public use or purpose, but on the contrary the presumption is that it was acquired because the county was forced to do so to save itself from loss.

Under the showing made, therefore, it is my opinion that you are without authority to comply with the request of the said Resolution.

August 1, 1935.

TAX ADJUSTMENT BOARDS—GENERAL AND LOCAL STATUTES

Dear Sir:

In your letter of June 21, 1925, you refer to a letter of Honorable T. W. Conely, Jr., of Okeechobee, Florida, copy of which is attached to

DELINQUENT TAXES

your letter relative to a conflict between House Bill 581, Chapter 17631, and House Bill 163, Chapter 17406, Acts of 1935.

House Bill 163 is a general law creating for each county a delinquent tax adjustment board, prescribing its powers and duties, creating a tax delinquent adjustment board of appeals, and prescribing its powers and duties, and providing for the compromise and adjustment of tax sale certificates held by the State.

This Act became a law May 3, 1935.

House Bill 163 has been declared unconstitutional by the District Court for the Southern District of Florida, composed of three judges, one of whom was Circuit Judge Nathan P. Bryan. House Bill 581 is a local act which became effective after House Bill 163.

I do not assume to pass on the validity of either of these acts, but unless and until a court of competent jurisdiction holds House Bill 581 invalid, the authorities of Okeechobee County would be justified and protected in assuming the same to be valid, and acting thereon.

August 3, 1935.

**NEWSPAPERS— QUALIFICATION FOR PUBLICATION OF
DELINQUENT TAX LIST**

Dear Sir:

I have your letter of the 23rd ultimo making inquiry as to the qualification necessary for a newspaper to publish the delinquent tax list.

In reply your attention is called to Section 969, Compiled General Laws of Florida, 1934 Supplement, which provides that a delinquent tax list shall be published in some newspaper published in the County, if there be a newspaper, said newspaper to be selected by the Board of County Commissioners at their first regular meeting in February of each year, and the newspaper so selected shall have been continuously published in the County for a period of not less than 1 year *prior to its selection*.

Your attention is further called to Section 4901, Compiled General Laws of Florida, 1927, which defines a newspaper for the publication of legal notices as a paper printed and published periodically once a week or oftener, wholly or in large part in the English language, entered or qualified to be admitted and entered as second class matter at a post office in the County where published, for sale to the public generally, etc.

Your attention is further called to Section 4274 (1), Compiled General Laws of Florida, 1934 Supplement, which requires newspapers publishing legal notices, including notice of sale of property for taxes, to

DELINQUENT TAXES

be a newspaper which at the time of publication shall have been continuously published at least once each week and shall have been entered as second class mail matter at a post office in the County where published for a period of one year next preceding the first insertion of such publication, or in a newspaper which is a direct successor of a newspaper, or in a newspaper being published May 20, 1931: Provided, however, that nothing herein contained shall apply where in a County of the State of Florida there shall be no newspaper in existence which shall have been published for the length of time prescribed by this section.

July 29, 1935.

**TAX SALE ADVERTISEMENTS—SELECTION OF NEWSPAPERS BY
COUNTY COMMISSIONERS**

Dear Sir:

Replying to your letter of the 29th instant, I beg to advise that the Comptroller has no authority whatever in the selection or designation of newspapers in which to publish notice of the sale of property for delinquent taxes.

Section 756 of the Revised General Statutes of Florida (Section 969, Compiled General Laws) makes it the sole duty of the Board of County Commissioners at their first regular meeting in February of each year to select the newspaper in which the notice of sale for delinquent taxes shall be published.

August 8, 1935.

**TAX LIENS CANCELLED ON PROPERTY ACQUIRED BY PUBLIC
AUTHORITIES OF THIS STATE FOR AERONAUTICAL
PURPOSES**

Dear Sir:

I beg to acknowledge receipt of your letter of the 5th inst., enclosing copy of House Bill Number 1040, Chapter 17426 of 1935, together with correspondence between your office and the office of the Clerk of the Circuit Court of Brevard County, relative to the cancellation of delinquent taxes on lands leased by the Galbourne Land Company, Inc., to the City of Melbourne, a municipal corporation, for aeronautical purposes, in which you request advice as to whether you are authorized to cancel the taxes on the leased real estate.

There are many ambiguities in House Bill Number 1040, and it is difficult to determine just what the Legislature had in mind in enacting this law.

DELINQUENT TAXES

Section 1 of the Act is as follows:

"Section 1. That in all cases where lands have heretofore been, or may hereafter be acquired by the duly constituted *public authorities of this State for aeronautical purposes*, against which there shall be outstanding any tax lien held and owned by the State of Florida, such tax lien, or part thereof, shall be cancelled by the State Comptroller in the manner hereinafter provided in this Act." (Italics mine)

If it is the intention of the Act that the public authorities of this State for aeronautical purposes should be the only public authorities to whom cancellation of outstanding tax liens should be given, and this is the literal construction to be placed upon Section 1 as punctuated, then you should look to the existing statutes to ascertain who constitutes the public authorities of the State for aeronautical purposes.

This construction of the Act is also brought out by Section 3 thereof, which reads as follows:

"Section 3. This Act shall affect tax liens held and owned by the State of Florida, and such liens only, and lands acquired by the duly constituted *public authorities of the State for aeronautical purposes*, and such lands only." (Italics mine)

The only constituted public authorities of the State for aeronautical purposes existing at the time of the passage of the Act are members of the State Road Department, as provided in Section 1, Chapter 14643, Acts of 1931, Laws of Florida, which *authorizes* and empowers the State Road Department to lay out and designate airways in the State. Section 2 empowers them to locate and establish along said airways landing fields, and Section 3 of the Act authorizes them to accept conveyances in *fee simple* of lands of such area, character and location as shall be suitable for the development and use for emergency landing fields. Section 4 of the Act gives them power of eminent domain, through which such landing fields may be acquired and established. Section 5 of the Act authorizes the Trustees of the Internal Improvement Fund to convey land to the Road Department for such purposes. Section 6 authorizes the State Road Department to prepare, construct and maintain said landing fields either by convict labor or by contract, in the same manner the highways of the State are constructed and maintained.

It was evidently the intention of the Legislature to provide for the cancellation of tax liens on lands acquired by the Road Department for aeronautical purposes, in fee simple, as under the Act of 1931 no authority is given to lease or to take a conveyance of any other kind than that of a fee simple title.

A literal construction of Section 1 and Section 3 above quoted confines the operations of the Act to lands acquired by the State Road Department for aeronautical purposes and you would be authorized to cancel tax certificates on such lands.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
DELINQUENT TAXES

September 9, 1935.

TAX SALES—RE-ADVERTISEMENT UPON DEATH OF
TAX COLLECTOR

Dear Sir:

I have given some study to the question arising in Columbia County upon the death of _____, County Tax Collector, as to the sale of lands for taxes under the notice given, and have arrived at the conclusion that it will be necessary for the new Tax Collector to re-advertise the property for sale after giving the required notice.

Section 970, Compiled General Laws of Florida, requires that the sale (of land) shall commence on the regular sale day prescribed by law and may be continued from day to day. Section 972, Compiled General Laws of Florida, provides that on the day designated in the notice of sale at 12 o'clock noon, the Tax Collector shall commence the sale of those lands on which taxes have not been paid, etc.

The sale of lands for taxes and the certificates of sale issued in pursuance thereof become the basis of tax titles, and unless the statutes are strictly complied with, no valid tax deed can issue. Omission to advertise lands for sale for taxes as required by statute is a vital defect. See *Daniel vs Taylor*, 33 Fla. 636, 15 So. 313.

A tax sale is void unless the notice of sale is duly published in accordance with the requirements of the statute. See also *Orlando vs Equitable B & L Association*, 45 Fla. 507, 33 So. 986.

See also *Stevens vs Futch*, 73 Fla. 708, 74 So. 805, to the effect that requirements of publication of notice of tax sale in selected paper is partly for benefit of taxpayer, and failure to comply therewith renders further proceedings invalid.

To the same effect see *Pratt vs Pope*, 78 Fla. 270, 82 So. 805.

In *Hightower vs Hogan*, 69 Fla. 86, 68 So. 669, it is held that the notices required by the statute to be given are material for the protection of those having the right to redeem, and such requirements should be complied with or the tax deed is invalid.

The Courts are reluctant to hold tax sales valid unless the statutes authorizing the sales are strictly complied with. And if a taxpayer appeared on the sale date named in the advertisement for the purpose of redeeming his property advertised for sale for non-payment of taxes, and no sale was made on account of the death of the tax collector, he would have done all the law requires of him to redeem his property, and a sale of such property later without giving the notice required by statute would in my opinion render a tax deed based upon such sale void.

The lands should be re-advertised the length of time required by

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statute, by the Tax Collector appointed to succeed the deceased Collector, and the sale should be made in pursuance of such re-advertisement.

September 7, 1935.

**REMOVING BUILDINGS FROM TAX CERTIFICATED LANDS
FORECLOSED BY CITY**

Dear Sir:

I have your letter of August 31st, in which you state that the City of Lakeland has obtained title to a number of city lots through foreclosure of city tax liens and that the city is now removing buildings from some of these lots without paying the State and County taxes which accrued prior to the time the city became the owner thereof. You request my opinion as to whether or not it is your duty as State Attorney to collect the taxes due the State and County upon this property or whether it is the duty of the Board of County Commissioners to attend to this matter.

It has been the practice during the past several years for the Board of County Commissioners of each County to take such legal action as they thought necessary to prevent the impairment or destruction of liens for State and County taxes in cases where the owner of the property undertook to remove buildings therefrom. It is my opinion that this is the most orderly manner of enforcing the rights of the State and, unless there are special circumstances, I prefer that this practice be continued. See my opinion dated October 7, 1933, Page 103, Biennial Report of the Attorney General, 1933-34.

In this connection your attention is respectfully directed to Sections 7392, 7397 and 7398, Compiled General Laws of Florida, 1927, which makes it a criminal offense for any person to trespass on State lands and a criminal offense for any person to cut or remove timber or to remove or work for turpentine, timber on land sold to the State for taxes. On September 22, 1934, (See Page 520, Biennial Report of the Attorney General, 1933-34) I rendered an opinion to the effect that it is the duty of the State Attorney to investigate and bring to the attention of the Grand Jury any violation of either of the cited Sections of the Statute.

October 11, 1935.

**CREDIT AGAINST TAX SALE CERTIFICATES ON ACCOUNT OF
ITEMS DECLARED UNCONSTITUTIONALLY LEVIED**

Dear Sir:

Replying to your request for an opinion on this subject, it is my opinion that in the redemption of tax sale certificates or in the pay-

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ment of delinquent taxes, taxpayers should be allowed a credit to the amount of all items included in the unpaid taxes which have been declared unconstitutional or illegal upon final determination by the Courts.

October 11, 1935.

**RIGHT OF OWNER OF TAX SALE CERTIFICATE TO FORECLOSE
UNDER PROVISION OF SECTION 13 OF CHAPTER 14572, ACTS OF
1925, NOTWITHSTANDING CHAPTER 17442, ACTS OF 1935
(SENATE BILL NO. 406)**

Dear Sir:

Replying to your request for an opinion on this subject, it is my opinion that the right of persons to foreclose tax sale certificates lawfully acquired between the effective dates of Chapter 14572 and Chapter 17442 is not affected by the repeal of Section 13 of Chapter 14572, Acts of 1929, by Section 1 of Chapter 17442, Acts of 1935, as otherwise the effect of the latter Act as applied to owners of tax sale certificates would be to impair the obligation of the contract between such certificate holder and the State, in the purchase and sale thereof, in violation of Section 10 of Article I of the Constitution of the United States.

October 11, 1935.

**REDEMPTION OF TAX CERTIFICATES AND SUBSEQUENT TAXES
BY THE USE OF BONDS ON THE BASIS OF THE LAST ASSESSED
VALUATION WHEN THE SAME IS LOWEST**

Dear Sir:

Replying to your request for an opinion on this subject, I beg to advise that the Supreme Court of Florida in *Moye vs State ex rel McCollum*, 151 So. 501, held that tax certificates and subsequent taxes may be redeemed by the use of bonds by applying the millage tax levied for a given year to the valuation as regulated by Section 997, Compiled General Laws of 1927, which is the last assessed valuation, if that is less than the regular valuation.

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December 5, 1935.

STATE TREASURER DOES NOT HAVE AUTHORITY TO APPLY FOR
A TAX DEED UPON TAX SALE CERTIFICATE ISSUED IN HIS NAME

Dear Sir:

I have your letter in which you request my opinion as to whether or not you, as State Treasurer, can apply for a tax deed under a tax sale certificate that has been issued in your name and which is more than two years old and is now in the hands of the State.

Section 1003, Compiled General Laws of Florida, 1934 Supplement, fixes the manner of obtaining a tax deed but in my opinion this Section applies only to the holder of tax sale certificates other than the State. There is no provision of law which permits you as State Treasurer to apply for a tax deed under tax sale certificates owned by the State.

June 19, 1936.

LESSEE, WITH CONSENT OF OWNER, MAY PURCHASE TAX
CERTIFICATES ON ADJUSTED BASIS UNDER CHAPTER
17,406 ACTS OF 1935

Dear Sir:

This is in reply to your letter of June 10, 1936. You request my opinion as to whether or not the provisions of Chapter 17,406, Acts of 1935, authorize a lessee to purchase tax certificates on an adjusted basis with the consent of the owner of the land.

Under date of March 18, 1936, I stated in an opinion directed to you as follows:

"An owner who has been granted an adjustment of his delinquent taxes under Chapter 17,406, supra, has nine days within which he alone may take advantage of the adjustment. Ten days after the entry of the adjustment order, the owner, lessee, mortgagee, judgment creditor and other lien holders against the land may purchase or redeem it at any time during the period of six months from the date of the granting of the adjustment. Sections 6 and 6 A."

It is my opinion that under the provisions of Section 6 and 6 A of Chapter 17,406, Acts of 1935, that a lessee may purchase the tax certificates on an adjusted basis with the consent of the owner of the land.

DELINQUENT TAXES

June 22, 1936.

TAXATION—ADJUSTMENT OF SUBSEQUENT AND OMITTED TAXES

Dear Sir:

This is in reply to your inquiry concerning the adjustment of certain subsequent and omitted taxes under Chapter 17406, Acts of 1935. You refer to a recent opinion of the Supreme Court construing Section 3 of Chapter 17406, Acts of 1935, insofar as the same purports to authorize the adjustment of subsequent and omitted taxes. The case to which you refer is *RICHEY vs. WELLS*, 166 SO. 317.

In my opinion of May 25, 1933, I did not, of course, pass upon the constitutionality of Section 3 of Chapter 17406. So long as the provisions of a statute are not declared unconstitutional by a court of competent jurisdiction, it is the duty of the administrative officers to enforce the statute as written. My opinion was therefore predicated upon the assumption that the statute was to be administered in the manner outlined by the Legislature. Inasmuch as the Supreme Court of Florida has specifically considered the provisions of the statute authorizing the adjustment of subsequent and omitted taxes and has in no uncertain terms declared said provisions to be unconstitutional, the statute is now to be administered in the light of the construction given it by the Supreme Court. It is therefore my opinion that the adjustments of subsequent and omitted taxes made before the decision of the Supreme Court was rendered but which have not been finally completed are now without effect.

June 9, 1936.

TAXATION—ADJUSTMENT BOARDS

Dear Sir:

This is in reply to your request for my opinion as to the proper construction of Chapter 17408, Acts of 1935, with particular reference to the apparent conflict between Sections 3 and 13.

Section 3 provides that the Delinquent Tax Adjustment Boards shall hold meetings not later than the tenth day of each of the months of May, June, July, August, September, October and November during the years 1935 and 1936, for the purpose of receiving and passing upon applications for compromises and adjustments. Section 13 provides that the Delinquent Tax Adjustment Boards shall cease to exist after April 1, 1936, except for the purpose of completing tax compromises filed and determine prior to that date.

It is an established principle of law that the last expression of the legislative will is the law in case of conflicting provisions in the same

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statute, and the last provision in the order of arrangement prevails. See *Corpus Juris*, page 999. It is also a well established principle of law that apparently conflicting provisions of a statute are to be construed, if possible, to give effect to both.

It is my opinion that the Tax Adjustment Boards should meet, if necessary, at the time designated in Section 3, but that after April 1, 1936, the only business to be transacted at such meetings is that which relates to completing tax compromises filed and determined prior to that date.

August 20, 1936.

CHAPTER 17457, LAWS OF FLORIDA, ACTS OF 1935—TAX SALE
CERTIFICATES—PAYMENT OF BALANCE

Dear Sir:

This will acknowledge receipt of your communication under date of August 12, 1936, wherein you quote in part from a letter received by you from a Clerk of the Circuit Court of this State. In effect, the portion of the letter quoted shows that the Clerk is in doubt as to the person to whom the surplus or balance produced by a tax sale, should be paid. You request that I advise what course should be pursued.

I beg to advise that in cases such as this, where there is grave doubt as to the owner of the land to whom such surplus should be paid, it would be entirely proper and legal for the Clerk of the Circuit Court to file bill in equity, in his capacity as such, in the nature of a bill of interpleader, naming as parties defendant all persons who might be interested as owners of the property, paying the balance into court, and letting said interested persons litigate the matter among themselves.

September 12, 1936.

TAXATION—CHAPTER 17406, ACTS OF 1935—DELINQUENT TAX
ADJUSTMENTS—GOVERNOR WITHOUT POWER TO EXTEND
TIME FOR REDEMPTION ON ADJUSTED BASIS

Dear Sir:

This refers to your communication of September 1, 1936. With your letter you enclosed letter to you, the third paragraph of which reads, in part, as follows:

"The law providing for the adjustment of taxes with county commissioners, closes the door to redemption on the adjusted basis October 1st. Is there any way you can, by proclamation, extend the benefits of that law, say to January 1st? * * *

DELINQUENT TAXES

We got an adjustment on all our holdings and we are paying off as fast as we can, but I was just hoping that if we did not complete our program by October 1st, you could, for the benefit of all taxpayers who have not been able to complete their payments on the adjusted basis, by proclamation, extend the time * * * ”.

You request my advice as to whether you are authorized to make the extension referred to in said paragraph. I assume that the adjustments referred to were had under Chapter 17406, Acts of 1935, paragraph 6 of which provides:

“Ten (10) days after the entry of the order, or, if an appeal be taken, within ten (10) days after the determination of such appeal, the owner, or any person interested, may redeem or purchase such certificate or certificates in the manner provided by law, by paying the amount so determined, together with all omitted taxes as adjusted. Thereafter, any such owner or persons interested may redeem or purchase such certificate or certificates by paying the adjusted amount, together with all omitted taxes as adjusted, together with interest upon the aggregate of such amounts at the rate of 6% per annum from the date of the entry of the original order of adjustment; provided, however, that if payment shall not be made under any such order of adjustment within six months after the final determination of the application for compromise or adjustment of any such certificate, whichever shall be the later date, then the said order of adjustment shall immediately become null and void and of no force or effect, to the same extent as if no application had ever been made for adjustment or compromise with reference to such certificate.”

I assume, also, that in this particular instances, the stated date of October 1st marks the end of such six months period.

Upon this basis, I have to advise that, in my opinion, you have no authority to extend such time for payment upon the adjusted basis, beyond the stated period of six months, whether by proclamation or otherwise. This follows because such an attempted extension would constitute an interference with the clearly expressed legislative intent, and would amount to attempted executive legislation in the face of the provision of the statute that if payments on the adjusted basis are not completed within the six months provided, then the original order of adjustment shall become null and void.

DELINQUENT TAXES

January 25, 1936.

**FUTCH ACT—RETURN OF BONDS DEPOSITED WITH STATE
TREASURER RECEIVED BY COUNTY FOR
DELINQUENT TAXES***Dear Sir:*

With your letter of the 24th instant you submit a letter from the _____ County School Superintendent of Broward County, in which he states that the Board of Public Instruction of Broward County authorized him to request you to return to his office all bonds and interest coupons which have been turned in to you in settlement of taxes of various kinds prior to the statute enacted in 1933 which he says changed the law so that the Clerk of the Court became the custodian of such bonds instead of you.

You ask my opinion as to whether this request can be complied with.

Section 7 of Chapter 15054, Acts of 1931, requires all bonds received by any county or district in redemption of delinquent taxes to be within thirty days forwarded to the State Treasurer, who shall keep and hold the same for the account of the parties in interest as custodian thereof. The letter of _____ does not give the Chapter number of the Act of 1933 referred to, which he says changed the 1931 Act by making the Clerk custodian of such bonds instead of you. If he had in mind Chapter 16252, Acts of 1933, known as the Futch Act, he is in error, as the Futch Act makes the Clerk of the Circuit Court custodian only of those bonds and coupons received in settlement of tax sale certificates under the Futch Act, and does not make him custodian of bonds or coupons received in settlement of delinquent taxes under any law prior to the enactment of the Futch Act.

November 22, 1935.

**TRUSTEES I. I. FUND—CANCELLATION OF OUTSTANDING STATE
TAXES ON LANDS ACQUIRED BY THE STATE***Dear Sir:*

I have your letter of the 12th instant, the body of which reads as follows:

"On November 6th there was before the Trustees for consideration a proposal for acquiring certain lands in Highlands and Hardee Counties. The matter was referred to you for your opinion with reference to two questions hereinafter set out.

In 1934 the Trustees of the Internal Improvement Fund by various deeds acquired by gift an aggregate of 2,560 acres of

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land in a contiguous body in Highlands County, and dedicated the same as a STATE FOREST PARK.

To facilitate the acquisition of additional lands around those previously acquired for the purpose of enlarging the park, the following was done:

Three Acts of identical nature were passed by the
1935 Session of the Legislature, being Special Acts
Chapter 17530, DeSoto County
Chapter 17546, Hardee County
Chapter 17550, Highlands County

Pursuant to the respective Acts, the County Commissioners of Hardee and Highlands Counties have arranged with the owners of lands delinquent in taxes for cancelling tax sale certificates except as to state taxes and for deeding the lands on which certificates will be so cancelled to the Trustees of the Internal Improvement Fund. Of the lands so deeded:

Some will become a part of Highlands Hammock State Park as enlarged,

Some will be used for exchange with private owners in order to block into a contiguous body the lands proposed to be added to the present state park.

The total area to be deeded to the Trustees is 65,000 acres in round figures. Through exchange with private owners and through re-deeding part as consideration for deeds to Trustees, 40,000 acres comprising a contiguous body will vest in the Trustees, which when added to 2,560 acres comprising the present park, will result in a total of about 42,500 acres for the State Park under the proposed arrangement.

In connection with the foregoing, the following questions are asked by the County Commissioners and by persons who will take deeds from the Trustees:

1. When delinquent taxes, except those for state purposes, are cancelled, will the vesting of title in the State through the Trustees of the Internal Improvement Fund operate to cancel the lien for unpaid state taxes?
2. After title vests in the Trustees for the State, and the Trustees subsequently deed such lands to private persons, will the lands so deeded be free from the lien for state taxes?

In view of the considerable arear of land involved and the importance of the matter, the Trustees desire your opinion on the above points."

In reply to your questions I beg to say that in my opinion the vesting of title to said lands in the Trustees of the Internal Improvement

DELINQUENT TAXES

Fund with delinquent taxes cancelled, except as to State taxes, would not have the effect of cancelling the outstanding delinquent State taxes against said lands, and said State taxes may not be cancelled under our present laws except by payment of the same.

June 5, 1935.

**TAXATION—STATE TREASURER—DISPOSITION OF BONDS AND
INTEREST COUPONS HELD UNDER CHAPTER 15054, LAWS
OF FLORIDA, ACTS OF 1931.**

Dear Sir:

This acknowledges your communication of April 29th, enclosing certified copy of resolution of the Board of County Commissioners of Hardee County, wherein it is recited that certain bonds of various taxing districts of said county were accepted pursuant to the provisions of Chapter 15054, Laws of Florida, Acts of 1931 (and also Chapter 15056, Laws of Florida, Acts of 1931—but this is obviously an error because it does not apply in any manner to you); and that said bonds and coupons are in your custody and the Board resolves to instruct you to perforate and cancel all such obligations and return them to the County of Hardee to be filed as retired obligations.

You ask whether or not you may legally carry out the request contained in this resolution.

It is my opinion that under said Chapter 15054, you are not authorized to comply with the request contained in this resolution. It is specifically provided by Section 2 thereof that the evidences of debt taken in under said Act shall constitute an asset in trust held by the custodian thereof for the use and benefit of the taxing district for those taxes the same were accepted, and the interest of each shall exist in such asset in the proportion that the taxes of each thereby bore to the whole tax represented by the tax lien; and by Section 3 it is provided that such shall be held with the matured and unmatured interest coupons thereof left intact, but shall bear no interest during the time they are so held.

It is further provided in Section 7 that such obligations taken in are to be forwarded to you, and that you "shall keep and hold the same for the account of the parties in interest, as custodian thereof."

Without further legislation it is my opinion that you should continue to hold these as an asset in trust, in accordance with the said Act of 1931, and that you are not authorized to turn them back to the county to be cancelled.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
DELINQUENT TAXES

September 23, 1936.

TAX LIENS—FORECLOSURE BY BOARDS OF COUNTY COMMISSIONERS OR STATE COMPTROLLER

Dear Sir:

This is in reply to your letter of September 18, in which you request my opinion as to whether or not there is any statute under which either the Comptroller or the Boards of County Commissioners can authorize the institution of suits for the foreclosure of delinquent tax liens.

I call your attention to the following provisions contained in Section 896, Compiled General Laws of Florida, 1927:

"All real and personal property shall be subject to taxation on the first day of January of each year, and this Chapter shall create a lien upon such property for the purposes thereof superior to all others, which lien in addition to the provisions of this Chapter for the collection of taxes on personal property may be enforced by suit in equity."

I also call your attention to the following provisions contained in Section 1020, Compiled General Laws of Florida, 1927:

"Any holder of a tax deed or of a tax certificate shall have a lien thereunder for the amount paid therefor upon the land described therein and such lien may be enforced and foreclosed by suit in equity as provided by law for the enforcement of statutory liens."

I also call your attention to Section 5034, Compiled General Laws of Florida, 1927, which reads as follows:

"5034. (3228) Extension of.—All liens of any kind, whether created by statute or the common law, and whether heretofore regarded as merely possessory or not, may be enforced by proceedings in chancery."

I call your further attention to Chapter 17460, Laws of Florida, Acts of 1935, which provides for the foreclosure of tax sale certificates and deeds which have been issued to the Treasurer of the State in counties having a population of not less than 180,000 or more than 200,000.

I further call your attention to Chapter 17431, which amends Section 2166, Compiled General Laws and which relates to counties having a population of not less than 130,000.

The Supreme Court of Florida has stated in several cases that the remedy provided by Chapter 14572, Laws of Florida, Acts of 1929, was not an exclusive remedy.

The following is from the opinion of the Court in the case of *City of Bradenton vs. Lee*, reported in 162 So. 139, text page 140:

DELINQUENT TAXES

"The following cases are illuminative of this point: Allison Realty Co. v. Graves Inv. Co. 113 Fla. 48, 155 So. 745; Coral Gables Properties, Inc. et al. v. Stopler, 115 Fla. 231, 155 So. 799.

"(2) These cases settle the rule in this state to the effect that we have a variety of methods of foreclosing tax liens, chapter 14572, Acts 1929 (Ex. Sess.); section 794, Revised General Statutes of 1920, as amended by Acts 1927, c. 12409, § 2, section 1020, Compiled General Laws of 1927; section 696, Revised General Statutes of 1920, section 896, Compiled General Laws of 1927; and section 3228, Revised General Statutes of 1920, section 5034, Compiled General Laws of 1927, none of which are exclusive."

It is my opinion that the remedies afforded by the statutes hereinabove referred to are available to the State and counties.

July 10, 1935.

**DELINQUENT TAX ADJUSTMENT BOARDS, EFFECT OF INJUNCTION
ISSUED IN CASE OF RIDGWAY V. CESSNER, ET AL**

Dear Sir:

I have your letter to which you attach a copy of a temporary injunction issued by the Honorable N. G. Rowe, judge of the Seventh Judicial Circuit, in and for Volusia County, in the above entitled cause.

You request me to advise you as to whether or not this order makes "inoperative all the provisions of House Bill 163, Chapter 17406, Acts of 1935, insofar as Volusia County is concerned and whether or not the Delinquent Tax Adjustment Boards in other Judicial Circuits are affected by this decision".

It is my opinion that:

1. The temporary injunction issued in this cause enjoins and restrains the members of the Delinquent Tax Adjustment Board of Volusia County until the further order of the Court from performing any acts under the terms and provisions of House Bill 165, Laws of Florida, Acts of 1935. Under this order all of the provisions of House Bill 163, *supra*, are suspended in Volusia County until the further order of the Court.

2. The temporary injunction entered by Judge Rowe in this case does not affect the operation of the Delinquent Tax Adjustment Board of any County other than Volusia County.

DELINQUENT TAXES

May 31, 1935.

DISPOSITION OF PROCEEDS RECEIVED UNDER SETTLEMENT
AUTHORIZED BY DELINQUENT TAX ADJUSTMENT BOARD
CREATED BY HOUSE BILL 163, CHAPTER 17406 OF
THE 1935 LEGISLATURE

Dear Sir:

I have your letter of May 25th in which you request my opinion upon the following question:

"In disposing of the adjusted amount authorized by the Delinquent Tax Adjustment Board, can the County Commissioners divert such sums to one or more funds or must they be distributed to the funds for which the taxes adjusted were originally assessed?"

It is my opinion that the proceeds received from a compromise or adjustment of taxes authorized by a Delinquent Tax Adjustment Board under House Bill 163 of the 1935 Legislature must be distributed pro rata to the several funds for which the taxes compromised or adjusted were originally levied and assessed.

May 25, 1935.

TAXATION—HOUSE BILL 163, CHAPTER 17406—1935 LEGISLATURE

Dear Sir:

I have your letter in which you request my opinion upon certain questions concerning House Bill No. 163 of the 1935 Legislature:

1.

"Does the year 1933 as used in Section 3 apply to certificates issued in 1933 or to taxes assessed for that year?"

The reference in Section 3 of the Act to the year 1933 is to taxes levied and assessed in the year 1933.

2.

"Does the Board have authority to adjust 1933 and 1934 and 1935 taxes as subsequent taxes as indicated in Section 3?"

Under Section 3 of the Act the "Delinquent Tax Adjustment Board" of the several Counties has authority to compromise and adjust taxes levied and assessed for the years 1933 and 1934 as omitted subsequent taxes, provided there is a tax sale certificate against the land outstanding and in the hands of the State. The 1935 taxes may be compromised

DELINQUENT TAXES

and adjusted as they become due on November 1, 1935, provided there is a tax sale certificate outstanding against the land and in the hands of the State.

3.

"Section 6 provides that under certain circumstances tax certificates held by the State may be redeemed or purchased while Section 9 prohibits the sale of certificates held by the State until April 1, 1935. Which governs?"

There is no conflict between Section 6 and Section 9 of the Act. Section 6 applies only in a case where there has been a compromise or adjustment of delinquent taxes, whereas, Section 9 applies only in a case where there has not been a compromise or adjustment of delinquent taxes.

Section 6 provides that if a compromise or adjustment of delinquent taxes is made then "ten (10) days after the entry of the order, or, if an appeal be taken, with ten (10) days after the determination of such appeal, the owner, or any person interested, may redeem or purchase such certificate * * *". It further provides that after the ten day period, and at any time within six months of the final determination by the Board of the compromise or adjustment, the owner, or any person interested, may redeem or purchase such certificate by paying the adjusted amount plus interest at the rate of 6% per annum. If the redemption or purchase is not made within six months of the final determination of the amount to be paid, then the owner and interested persons lose all rights thereto.

Section 9 prohibits the sale of all "tax sale certificates held by the State for taxes for the year 1933 or prior years" until April 1, 1936, "except upon written application of the owner".

4.

"Is the authority of the Comptroller limited by this Act to prescribing the forms and seeing that the State tax is accounted for?"

The Act requires the Comptroller to prescribe the necessary forms and records to be used and filed by the Delinquent Tax Adjustment Board of each County. The Act does not give the Comptroller any specific authority in reference to its administration. Aside from having authority to prescribe the necessary forms, the Comptroller has no authority in the enforcement of the Act.

5.

"Does the provision under Section 3, requiring that all taxes due the State be paid in full also extend to and include interest on the taxes and the expense of sale?"

DELINQUENT TAXES

Section 3 of the Act requires "that all taxes due the State of Florida are to be paid in full". There is no provision in the Act which undertakes to authorize a compromise or adjustment of interest on taxes due the State, nor is there any provision which authorizes a compromise or adjustment on the fees to be charged in connection with the redemption or purchase of tax sale certificates and the settlement of omitted subsequent taxes except Section 8 limits the fees of the Clerk of the Circuit Court to twenty-five (25¢) cents for each certificate so redeemed or assigned. All other fees must be paid in full at the time of the payment of the compromise or adjusted amount of the taxes.

6.

"Has the Board authority to compromise and adjust taxes for Districts and other governing bodies, or is their authority limited to those taxes which are levied and administered by the Board of County Commissioners which under this Act becomes also the Delinquent Tax Adjustment Board?"

The Act gives the Delinquent Tax Adjustment Board authority to compromise and adjust all taxes which appear upon the County Tax Roll, except taxes due the State of Florida. The fact that some of the taxes appearing on the County Tax Roll may have been levied and assessed by some other taxing district does not in any manner affect the right of the Delinquent Tax Adjustment Board to compromise and adjust such taxes.

April 19, 1935.

**TAXATION—SENATE BILL NO. 36, CHAPTER 17461, OF THE 1935
LEGISLATURE DOES NOT PROHIBIT CLERK OF THE CIRCUIT
COURT FROM PERMITTING HOLDER OF TAX CERTIFI-
CATE TO REDEEM SUCH SUBSEQUENT CERTIFICATES
AND PAY SUCH SUBSEQUENT AND OMITTED TAXES
NECESSARY TO OBTAIN TAX DEED OR TO
FORECLOSE TAX CERTIFICATE**

Dear Sir:

I have your letter of April 18th in which you request my opinion upon the following question:

Does Senate Bill No. 36 of the 1935 Legislature prohibit the several Clerks of the Circuit Court of the State from permitting the holder of a tax sale certificate to redeem such subsequent tax sale certificates or to pay such subsequent and omitted taxes as may be necessary to entitle him to a tax deed on the property described therein, or to entitle him to foreclose upon the land described therein?

DELINQUENT TAXES

Senate Bill No. 36 of the 1935 Legislature reads as follows:

"AN ACT TO POSTPONE THE SALE OF TAX SALE CERTIFICATES UNTIL AFTER THE FIRST MONDAY IN JULY, 1935.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

SECTION 1. No Clerk of the Circuit Court shall sell any tax sale certificate now held or owned by the State of Florida until after the first Monday in July, 1935.

SECTION 2. This Act shall be in full force and effect from and after it shall become a law.

Approved 12th Day of April, A. D. 1935."

Section 1003, Compiled General Laws of Florida, 1934 Supplement, sets forth what must be done by the holder of a tax sale certificate in order to obtain the tax deed, to-wit:

"The holder of any tax certificate at any time two years after the date of its issuance may obtain a tax deed to the land therein described by application to the clerk of the circuit court of the county wherein such land is situated as provided by law, and the surrender of such certificate and the payment to the clerk of the proper amount for the redemption or surrender of all other outstanding subsequent certificates covering said land and the payment to the clerk of a fee of fifty cents for each certificate then redeemed, and for searches to ascertain all outstanding certificates, a fee of fifty cents for the oldest tax sale and a fee of fifteen cents for each subsequent tax sale at which said land was sold, or subsequent omitted tax year, *****."

It will be observed that the owner of a tax sale certificate, desiring to obtain a tax deed thereon, does not *purchase* any tax sale certificate or certificates but he redeems all outstanding subsequent certificates.

Section 1003 (2), Compiled General Laws of Florida, 1934 Supplement, sets forth the requirements of the bill of complaint of the owner of a tax sale certificate who seeks to foreclose the same, to-wit:

"A bill of complaint, unless in a suit of the State, shall be sworn to, and shall briefly set forth the fact of the issuance of the tax certificate or deed and the fact that complainant has paid all omitted and subsequent taxes and interest thereon and has redeemed all subsequent tax sale certificates affecting the same land.*****"

It will be observed that the owner of a tax sale certificate, who seeks to foreclose it, does not *purchase* any tax sale certificate but he must "*redeem all subsequent tax sale certificates affecting the same land*".

DELINQUENT TAXES

It is my opinion that Senate Bill No. 36 of the 1935 Legislature does not prohibit the several Clerks of the Circuit Court of the State from permitting the holder of a tax sale certificate, which is more than two years old, to redeem such subsequent tax sale certificates or pay such subsequent and omitted taxes as may be necessary to entitle him to a tax deed on the land described therein, or to entitle him to foreclose upon the land described therein.

February 12, 1935.

TAX DEED, PUBLICATION OF NOTICE

Dear Sir:

I have your letter in which you request my opinion upon the question of whether or not the Clerk of the Circuit Court may include in one notice of application for tax deed, which is published in a newspaper, the description of more than one tract of land where the person making the application for the tax deed is the owner of the tax sale certificates covering the different tracts of land.

The Comptroller of the State, who has general supervision of the tax laws of the State, has issued an administrative construction of Sections 1000, 1001, and 1002, Compiled General Laws, 1927, and Section 1003, Compiled General Laws, 1934 Supplement, to the effect that the Clerk of the Circuit Court may include in one notice of application for tax deed, which is published in the newspaper, the description of more than one tract of land where the person making application for the tax deed is the owner of the tax sale certificates covering the different tracts of land. The Clerk of the Circuit Court should follow the administrative construction placed on these statutes by the Comptroller.

November 23, 1936.

TAXATION—REFUNDS ON VOID TAX CERTIFICATES OR
TAX DEED

Dear Sir:

I am in receipt of your letter of the 17th instant enclosing correspondence between your office and Hon. _____, Clerk of the Circuit Court of Putnam County, relative to refunds of State taxes on account of the void tax deed to Alden B. and Ralph Crosby based on tax certificate No. 403, Putnam County, tax sale of 1919 for 1918, and subsequent omitted taxes.

I have examined the Court files attached to your letter in the case of Alden B. Crosby and Ralph Crosby vs. Juan B. Entralgo, et al., Putnam County, Chancery No. 2222. On examination of said file it ap-

DELINQUENT TAXES

pears that the Circuit Judge on December 19, 1926, in his final decree held the above mentioned tax deed null and void and ordered the same cancelled of record.

Answering your inquiry I beg to say that Section 1009, Compiled General Laws of Florida, 1927, appears to authorize a refund in such cases if you are satisfied in the matter. In this connection, I would suggest it might be well to secure a certificate from the Clerk of the Circuit Court that no appeal was taken in said case or if an appeal was taken the above mentioned decree of the Court had not been reversed. Since a period of about 10 years has elapsed it will be necessary to ascertain whether or not refund has already been made in said case. I am returning herewith correspondence attached to your letter, together with said Court files.

December 4, 1936.

1925 PUTNAM COUNTY TAX CERTIFICATE NO. 420—REFUND

Dear Sir:

The Comptroller has referred to me your letter of November 30, 1936, in which you request a refund of the State and County taxes as provided for by Section 1009 C. G. L.

I understand that a final decree has been entered in the case of the City of Palatka versus Ralph B. Wilson, as Executor, et al., in which a certificate held by your clients has been cancelled and the City of Palatka given a lien for city taxes on the property therein sought to be foreclosed.

I have read the opinion of the Special Master and the cases cited by him. I have also read additional authorities on this subject and would like to call to your attention the cases of the City of Sebring versus Wolf, 141 So. 736; Henderson versus Leatherman, 163 So. 310; and, Harjim versus O'Bannon, Tax Collector, 129 So. 918.

I would hesitate to advise Mr. Lee to refund the taxes under this certificate in the absence of a decision by the Supreme Court of Florida on an appeal duly taken in this case. It is true that Section 16 of Chapter 14,572 has been repealed by Chapter 17,442, Acts of 1935, but since the certificate was validated would the repeal of the validating statute have the effect of permitting the complained irregularities previously existing in the assessment to reinvest in said certificate? It would seem to me, that in the absence of a definite decision by the Florida Supreme Court that the Comptroller should not refund the money as requested.

SECTION 10

PROPERTY IN HANDS OF COURT RECEIVER

NO CORRESPONDENCE

SECTION 11

SCHOOL TAXES

NO CORRESPONDENCE

SECTION 12

SLOT MACHINES

November 21, 1935.

TAXATION—SLOT MACHINES—CHAPTER 17,257 OF 1935

Dear Sir:

I have your letter of this date the body of which reads as follows:

"Under Section 12½ of Chapter 17257, Acts of 1935, the operation of slot machines, unless in a hotel, within 300 feet of a school or church is prohibited.

"Will you please advise me if the word 'hotel', as used in this Section, applies to the entire hotel building or only to that part of the building used for hotel purposes?"

Section 12½ of Chapter 17,257, Laws of Florida, Acts of 1935, above referred to, reads as follows:

"No machines operated under the provisions of this Act shall be maintained or operated within 300 feet of any public school or church; provided, however, that this shall not apply to any machine operated or maintained in any hotel."

You will note that the foregoing Section refers to a hotel instead of a hotel building. It is, therefore, my opinion that the word "hotel", as used in said Section 12½, applies only to that part of a hotel building which is operated by and as a hotel.

November 16, 1936.

CHAPTER 17,257, ACTS OF 1935; ISSUANCE OF DUPLICATE LICENSE

Dear Sir:

I have your letter of the 14th inst., in which you ask my opinion as to whether or not you may issue a duplicate license for a license issued prior to November 3, 1936, in those Counties where the electors by referendum revoke the issuance of all licenses under Section 12 A of the said Act.

The Supreme Court have recently indicated that where slot machines have been licensed prior to the referendum that notwithstanding the vote of the electors the license will be good until October 1, 1937.

It is, therefore, my opinion that if the Court shall definitely hold the licenses issued prior to November 3rd continue in force and effect although the electors of the particular County have voted under Section 12 A to oust the slot machines, then you should issue a duplicate

SLOT MACHINES

license to one who has previously had a license issued to him and has lost or otherwise misplaced the same. By the duplicate you do not license the machine as the said duplicate is more or less evidence of the fact that you have previously licensed the machine or machines and that the license has been lost or otherwise misplaced.

December 30, 1936.

TAXATION SLOT MACHINE OPERATORS OPERATING MACHINES
CONTRACTED TO PURCHASE

Dear Sir:

I have your letter of December 28, 1936, in which you enclose an agreement under which the vendor purports to sell the coin machine or slot machine to the purchaser for a purchase price of \$300, payable \$1.00 per week, with the title reserved until the purchase price is fully paid. Section 5 of said contract provides as follows:

"Until the purchase price of said property has been paid in full, the vendor shall have the exclusive right to repair and service the same, to make any necessary adjustments thereof and to replace any parts which may be destroyed or become so worn as to interfere with the operation of the same, and he shall receive such compensation for such services as may be mutually agreed upon by the vendor and purchaser, payable at such times and under such conditions as may be covered by supplemental agreement, which may be "verbal or written, it being understood that no part of the cost of such repairs, replacements or services are included in the purchase price of such property and until the purchase price of said property has been paid in full, said machine shall remain locked and sealed and the key for opening the same shall remain in the sole possession of the vendor and said machine shall not be opened except in the presence of vendor or his representatives."

It is my opinion that this contract is not a bona fide sale and that the said agreement is entered into by and between the parties to enable the vendor or operator to avoid the payment of the operator's occupational licenses for the privilege of leasing or renting the said machine and to avoid at the same time paying the license required of an operator on each machine so leased or rented. The effect of such an instrument would be to deprive the State of a large portion of taxes now being received under Chapter 17257, Laws of Florida, 1935.

It is my opinion, therefore, that you should disregard such an agreement and require the full payment of the licenses required to be paid under Chapter 17257, Laws of Florida, 1935.

SECTION 13

CHAIN STORE TAXES (Chapter 16848 of 1935)

August 1, 1935.

CHAIN STORE ACT—TIRE AND TUBE DEALERS*Dear Sir:*

In your letter of June 24th you state that you have received inquiries as to whether one selling tires and tubes in connection with his principal business must pay the present tire and tube dealer's license, and in addition thereto the new store license which becomes effective July 1st. In other words, whether the new chain store tax law repeals or supersedes the tire and tube dealers' license tax Act.

Senate Bill 724, Chapter 16848, Acts of 1925, does not repeal the tire and tube dealers' license tax Act, which is Chapter 14412, Acts of 1927, and both will have to be paid where a merchant in addition to other merchandise handles tires and tubes.

Section 17 of Senate Bill 724 provides:

"OTHER LICENSES. The tax imposed by this Act shall not repeal any other license tax, occupational tax, excise tax, or tax levied by law as a condition precedent to engaging in business in the State of Florida, unless expressly repealed hereby."

Senate Bill 724 contains no provision expressly repealing Chapter 12412, Acts of 1927.

July 20, 1935.

CHAIN STORE ACT—PLACES OF SALE ON CONSIGNMENT*Dear Sir:*

I am in receipt of your letter of the 20th instant, enclosing copy of a letter from the Honorable———, dated July 18, 1935, in which he propounds three questions involving construction of Senate Bill No. 724, Chapter 16848, Laws of Florida, Acts of 1935.

With your permission I shall undertake at this time to answer only Question No. 1 as follows:

Is a store where a fertilizer manufacturer places its fertilizer on consignment a store or establishment of the manufacturer under the purview of Senate Bill 724, taxable under Sub-division A of Section 4 of said Act, so as to increase the number of stores and establishments of the manufacturer to the extent of the number of stores where such fertilizer is sold on consignment?

CHAIN STORE TAXES (Chapter 16848 of 1935)

The facts stated are that the company has five warehouses at which it maintains a salaried personnel to sell its fertilizer, and for each of which the company has applied for permit or license and has tendered the sum of \$500.00, which is \$100 for each of said company-owned warehouses. Also that the company had 35 outlets or agencies through general stores or agricultural supply stores, where its fertilizer was placed and sold on consignment basis.

It is my opinion that those stores where fertilizer of the manufacturer is sold on consignment do not constitute units in the chain of the manufacturer under Senate Bill 724, provided the consignment is made in good faith and not for the purpose of evading the tax imposed by Senate Bill 724, and provided other merchandise is sold at said stores, and provided that said stores are not maintained and operated primarily for the purpose of handling and selling said fertilizer on consignment; and provided further that the consignors do not directly or indirectly own, operate, maintain or control the stores of consignees.

July 24, 1935.

CHAIN STORE ACT—ONLY PERSON HOLDING LICENSE UNDER
CHAPTER 16,071, LAWS OF FLORIDA, ACTS OF 1933, ENTITLED
TO CREDIT ON LICENSE UNDER CHAPTER 16,848, LAWS
OF FLORIDA, ACTS OF 1935

Dear Sir:

I have your letter of July 22nd, in which you request my opinion upon the following questions:

First Question

"Will licensee be entitled to receive credit for the unused portion of amount of license paid to the State, County and City, or will he be only entitled to credit for the unused portion of amount paid to the State?"

Paragraph (d) of Section 7 of Chapter 16,648, (Senate Bill 724) Laws of Florida, Acts of 1935, reads as follows:

"Any permit holder may take credit on any tax payable for the privilege of doing business under Section 4 of this Act on tax due under subdivision A or in the months of August or September, 1935, due under subdivision B for the proportional unexpired portion of the amount paid for any license heretofore obtained by him under the provisions of Chapter 16071, aforesaid."

It is my opinion that any person holding a permit under Chapter 16,848, supra, will be entitled to receive credit on the tax due under:

CHAIN STORE TAXES (Chapter 16848 of 1935)

Subdivision A of Section 4 of Chapter 16,848, supra; or Subdivision B of Section 4 of Chapter 16,848, supra, in the month of August or September, 1935, for the proportional unexpired portion of the amount paid for any license heretofore obtained by him from the *State, County and City* under the provisions of Chapter 16,071, Laws of Florida, Acts of 1933.

Second Question

"Will other retail establishments, such as restaurants, lumber yards, etc., which were not licensed under Chapter 16071, Acts of 1933, be entitled to a refund for the unused portion of their license?"

You will note that Paragraph (d) of Section 7 of Chapter 16,848, supra, above quoted, limits the credit on the license required under that Act to "the proportional unexpired portion of the amount paid for any license heretofore obtained by him under the provisions of Chapter 16,071.* * *" supra.

It is my opinion that restaurants, lumber yards, and any other businesses, which do not hold a license under Chapter 16,071, supra, are not entitled to any credit on the license tax that may be due under Chapter 16,848, supra.

August 24, 1935.

CHAIN STORE ACT—DUTIES OF COMPTROLLER IN COLLECTION
AND DISBURSEMENT OF TAXES UNDER CHAPTER 16848,
ACTS OF 1935

Dear Sir:

I have your letter of August 20, in which you request my opinion as to your duties in reference to the collection of taxes and the distribution of the proceeds therefrom, under Chapter 16848, Laws of Florida, Acts of 1935.

It is my opinion that your duties under this law, in reference to the collection of taxes and disposition of the proceeds therefrom, are as follows:

1. Section 5 of the Act places upon you the duty of administering the act, including the collection of the taxes that may become due under its terms. The fact that suits are now pending in the Federal and State Courts challenging the constitutionality of the Act, does not relieve you of your duty in collecting taxes due thereunder, except that, of course, you will at all times abide by all orders of the Courts with reference to collection of taxes due from any person, firm or corporation, who is a party to the suits.

CHAIN STORE TAXES (Chapter 16848 of 1935)

2. You do not have authority to accept payment of taxes under protest. See my opinion of July 10, 1931, which appears on page 770 of my biennial report for 1931-1933, and see also my opinion of January 16, 1935. If taxes due under the act are tendered to you under protest, it will be your duty to return them to the person making the tender.

3. After paying the cost of the collection of the taxes levied by the act, it is your duty to pay over to the State Treasurer all money collected under the act. You do not have authority to hold the tax money pending a determination of the Courts of the validity of the act. When the money is paid to the State Treasurer it cannot be refunded to the taxpayer by you or anyone else, even if the act is later declared unconstitutional, either in whole or in part. Under our Constitution (Section 4 of Article IX) money can only be drawn from the State Treasury pursuant to an appropriation made by the Legislature, and since the Legislature has not made an appropriation for such purposes, the money collected under this act and paid over to the State Treasurer cannot be refunded to the taxpayer.

November 9, 1935.

CHAIN STORE ACT—CHAPTER 16,848, ACTS OF 1935, DOES NOT
REPEAL ANY OCCUPATIONAL LICENSE TAX LAW EXCEPT
CHAPTER 16,071, ACTS OF 1933

Dear Sir:

I have your letter in which you request my opinion upon the following question:

May a person, firm or corporation who is required to pay an occupational license tax under Chapter 16,848, Laws of Florida, Acts of 1935, also be required to pay an occupational license tax under a statute in effect when Chapter 16,848, *supra*, became a law?

Sections 16 and 17 of Chapter 16,848, *supra*, reads as follows, to-wit:

"Section 16. REPEALER. That Chapter 16071, of the Laws of Florida, 1933, be and the same is hereby repealed, provided that this section shall not be effective in the event that Section 4 of this Act should be invalid."

"Section 17. OTHER LICENSES. The tax imposed by this Act shall not repeal any other license tax, occupational tax, excise tax, or tax levied by law as a condition precedent to engaging in business in the State of Florida, unless expressly repealed hereby."

CHAIN STORE TAXES (Chapter 16848 of 1935)

It is my opinion that the only license tax law repealed by Chapter 16,848, supra, is Chapter 16,071, supra, and that the repealed of the latter is not to be effective if the former is declared invalid. A person, firm or corporation who is required to pay an occupational license tax under Chapter 16,848, supra, must also pay all other occupational license taxes required by other statutes. The only effect of Chapter 16,848, supra, upon the duties of the County Tax Collectors is to relieve them of the collection of the occupational license taxes under Chapter 16,071, supra.

December 5, 1935.

AMOUNT OF TAX REQUIRED TO BE PAID IF OPERATOR OF ONE
STORE ADDS AN ADDITIONAL STORE DURING THE LICENSE
YEAR UNDER CHAPTER 16,848, ACTS OF 1935

Dear Sir:

I have your request for my opinion upon the following question:

If a person operated one store on July 1, A. D. 1935, and obtained a license therefor under Class 1 of Subdivision A of Section 4 of Chapter 16,848, Laws of Florida, Acts of 1935, what amount of tax would he be required to pay if before the expiration of the license period he desired to open an additional store?

If a person operated one store on July 1, A. D. 1935, he came within Class 1 of Subdivision A of Section 4 of the Act. If he adds an additional store he will then come within Class 2 of Subdivision A of Section 4 of the Act. The theory of the Act is that the benefits derived by virtue of operating two stores are not confined to the last store that is opened but also extends back to the first store and that, therefore, each store in the chain must pay the increased tax by virtue of the increased privileges enjoyed.

It is my opinion that if a person operated one store on July 1, A. D. 1935, and obtained a license therefor under Class 1 of Subdivision A of Section 4 of the Act (\$10.00) and before the expiration of the license period (June 30, 1936), he opened an additional store, he would be required to obtain a license for the *two* stores under Class 2 of Subdivision A of Section 4 of the Act and to pay therefor the additional sum of \$90.00. The total tax under Class 2 of Subdivision A of Section 4 of the Act for two stores is \$100.00 but he would be entitled to a credit for the \$10.00 which he had paid for the one store under Class 1 of Subdivision A of Section 4 of the Act.

CHAIN STORE TAXES (Chapter 16848 of 1935)

December 31, 1935.

TAXATION—CHAIN STORE ACT—LICENSE FOR HALF YEAR MAY
BE ISSUED TO PERSON REQUIRED TO OBTAIN A LICENSE
UNDER CHAPTER 16848, ACTS OF 1935.*Dear Sir:*

I have your letter in which you request my opinion as to whether or not you are authorized after January 1st, 1936, to issue a six months' license to anyone required to obtain a license under Chapter 16848, Laws of Florida, Acts of 1935.

Chapter 16848, *supra*, does not make specific provisions for the issuance of a license for a fractional part of a year. Section 1055, Compiled General Laws of Florida of 1927, reads as follows:

"All licenses shall be payable on or before the first day of October of each year, and no license shall be issued for any fractional portion of a year, except as otherwise provided in this Chapter, and except that any license not otherwise specified in this Chapter may be issued after the first day of April to expire October 1st upon payment of one-half of the amount fixed as a price of such license for one year."

To same effect see also Section 1279(4) Compiled General Laws, 1934 Supplement.

At the time the above sections were enacted, all licenses were issued on October 1st and expired on the following September 30th. It was the intent of these sections that half-year licenses be issued. These sections of the statute were in force when Chapter 16848, *supra*, was enacted, and the three must be construed together so as to give effect to the intent of the Legislature.

It is my opinion that in construing Sections 1053, *supra*, and 1279(4) *supra*, together with Chapter 16848, *supra*, you are authorized after January 1st, 1936, to issue licenses for six months to persons required to obtain licenses under Chapter 16848, *supra*, and to charge and collect therefor one-half of the amount fixed as a price for such license for one year.

Any person obtaining a license for six months will, of course, be required to pay that part of the license which is represented by the gross receipts feature of the tax levied by Chapter 16848.

BIENNIAL REPORT OF THE ATTORNEY GENERAL 115
CHAIN STORE TAXES (Chapter 16848 of 1935)

January 21, 1936.

WHERE NO SALES ARE MADE FROM SECOND HAND CAR LOT, IT
WILL NOT BE CONSIDERED AS A "STORE" UNDER
CHAPTER 16,848, ACTS OF 1935

Dear Sir:

I have your letter of January 15th, in which you request my opinion as to whether or not a second hand car lot, maintained by an automobile dealer who has only one sales place and who transacts all business in connection with the sale of the second hand cars kept on the lot at his regularly established sales place, would be considered as a "store" under Chapter 16,848, Laws of Florida, Acts of 1935.

A second hand car lot as described would be nothing more than a storage place and would not be a place "in which goods, wares, or merchandise of any kind are sold or offered to be sold at retail". Under the circumstances described in your question, it is my opinion that such second hand car lot is not a "store" under the terms and provisions of Chapter 16,848, *supra*.

April 28, 1936.

TAXATION—STATUTES CONSTRUED—CHAPTER 16848 OF 1935
DOES NOT REPEAL SECS. 1149 AND 1204, C. G. L.

Dear Sir:

This is in reply to your inquiry as to whether or not Sections 1149 and 1204, Compiled General Laws of Florida (1927) are repealed by Chapter 16,848, Acts of 1935.

As stated to you in my opinion under date of November 9, 1935, Chapter 16,848, Acts of 1935, does not repeal any other license tax, occupational tax, excise tax, or tax levied by law as a condition precedent to engaging in business in the State of Florida unless expressly repealed in the 1935 statute. See Section 17 of Chapter 16,848, Acts of 1935. Inasmuch as Sections 1149 and 1204, Compiled General Laws of Florida (1927) are not specifically repealed, they remain in full force and effect.

CHAIN STORE TAXES (Chapter 16848 of 1935)

April 3, 1935.

CHAIN STORE ACT NOT APPLICABLE TO OIL COMPANIES OPERATING FILLING STATIONS WHICH ENGAGE PRIMARILY IN THE SALE OF GASOLINE AND OTHER PETROLEUM PRODUCTS BUT WHICH ALSO SELL TIRES, TUBES, BATTERIES, ETC.

Dear Sir:

I have your letter in which you request my opinion upon the question of whether or not an Oil Company operating Filling Stations which engage primarily in the sale of gasoline and other Petroleum products, and also sell certain other goods, such as, tires, tubes, tobacco, cold drinks, candies and crackers, are subject to the terms and provisions of Chapter 16,071, Laws of Florida, Acts of 1933, known as the Chain Store Act.

Section 6 of Chapter 16,071, *supra*, defines the term "store" as used in the Act and reads as follows:

"The term 'store' as used in this Act shall be construed to mean and include any store or stores of any mercantile establishment or establishments which are owned, operated, maintained or controlled by the same person, firm, corporation, co-partnership or association, either domestic or foreign, in which goods, wares or merchandise of any kind are sold at retail. Provided, however, the term 'store' shall not include filling stations engaged exclusively in the sale of gasoline and other petroleum products."

It is clear that the Legislature did not intend for the statute to cover "filling stations engaged exclusively in the sale of gasoline and other petroleum products" because Section 6 thereof specifically excludes them from the terms of the Act. There is grave doubt as to whether the statute covers filling stations engaged primarily in the sale of gasoline and other petroleum products and also sells other goods, such as, tires, tubes, tobacco, cold drinks, candies and crackers. The dominant nature of the business characterizes it for purposes of taxation. The sale by filling stations of the goods above referred to other than gasoline and other petroleum products is merely incidental to its primary business, which is the sale of gasoline and other petroleum products. So long as such sales are incidental and the dominant characteristics of the business remain that of the sale of gasoline and other petroleum products, I do not consider that they come within the meaning of the word "stores" as used in the Chain Store Act. Of course, if the sale of these goods become the primary business of the filling stations, they will then become stores and will be subject to the terms and provisions of the Act. See *Standard Oil Company of New Jersey versus Fox*, 6 Fed. Sup. 494, and cases cited therein. The rule in Florida as

CHAIN STORE TAXES (Chapter 16848 of 1935)

announced by our Supreme Court is that where there is a doubt as to the applicability of a taxing statute that doubt must be resolved in favor of the taxpayer. See the case of Packard versus Cook, 146 So. 223. This rule should be applied in the present case. Based upon the foregoing, it is my opinion that Chapter 16,071, supra, known as the Chain Store Act, is not broad enough to include filling stations engaged primarily in the sale of gasoline and other petroleum products which also sell certain other goods, such as, tires, tubes, tobacco, batteries, cold drinks, candies and crackers.

If goods other than gasoline and other petroleum products are sold at a filling station, a license must be procured for the sale of such other goods. For examples:

1. If the filling stations sell tires and tubes, a special license must be procured therefor. See Sections 1061-65, Compiled General Laws of Florida;
2. If it operates a battery charging and repair shop, a special license is required. See Section 1279 (13) Compiled General Laws, 1934 Supplement;
3. If it sells other goods, such as, tobacco, cold drinks, candies and crackers, a license as a general storekeeper is required. See Section 1197, Compiled General Laws of Florida.

The opinion of the Supreme Court of the United States in the recent case of Fox versus Standard Oil Company of New York, _____ U. S. _____, 79 L. Ed. 339, held that the Chain Store Act of West Virginia was broad enough to and did include filling stations. This case is not applicable to our statute because the decision in that case was based primarily on a prior construction placed on the statute by the State officials of West Virginia.

SECTION 14

MISCELLANEOUS

August 1, 1935.

TAXATION—LIEN FOR PAST TAX NOT PAID—SUBSTITUTE FOR
SENATE BILL NO. 160, CHAPTER 16838 OF 1935

Dear Sir:

If taxes levied for operating expenses be paid, and those levied for debt-service, that is, to pay interest and to provide a sinking fund for redemption of funded indebtedness and outstanding bonds, be not paid, as authorized by Substitute for Senate Bill No. 160, Laws of Florida, Acts of 1935, the latter tax continues as a lien on all the real and personal property of the owner and subject to enforcement by sale of the property in like manner as if no part of the taxes had been paid.

This would likewise be true in case of payment of any part of the taxes due, but failure to pay all.

August 1, 1935.

TAXATION—EXCISE ON MARGERINE—SENATE BILL 1038,
CHAPTER 17095 OF 1935

Dear Sir:

Replying to your letter of July 16th, 1935, on above subject, I beg to advise that Senate Bill No. 1038 applies to margerine which is used as a butter substitute, and that said Act has no application whatever to shortening products such as hard substitutes.

August 1, 1935.

TAXATION—FENCING LANDS COVERED BY STATE TAX
CERTIFICATES

Dear Sir:

With your letter of July 13, 1935, you enclose copy of a letter addressed to me by Honorable_____, State Attorney, under date of July 6, 1935, in which he states there is a concern that is beginning operations and contemplates building a pasture fence which will enclose a large amount of lands upon which the State of Florida holds unpaid and unredeemed tax sale certificates. Mr. _____ wants to know whether this can lawfully be done.

There is no law to prohibit persons from fencing and using their own land for pasturage purposes, notwithstanding such land may be

MISCELLANEOUS

subject to delinquent taxes evidenced by tax sale certificates owned and held by the State.

August 2, 1935.

TAXATION—FLORIDA INLAND NAVIGATION DISTRICT

Dear Sir:

I have your letter of the 30th ultimo advising that the Florida Inland Navigation District, which includes several counties on the East Coast is levying for the 1935 taxes one-half mill for maintenance and one mill for debt service. You make inquiry if the taxes so levied are "special assessments for benefits" as contemplated by Section 7, Article X of the State Constitution.

Florida Inland Navigation District was created by Chapter 12,026 of 1927, which Act was amended *in toto* by Chapter 14,723 of 1931. I find no recital in the statute as to special benefits, and in my opinion the taxes levied by the district are not "special assessments for benefits" as contemplated by Section 7, Article X, of the State Constitution.

October 11, 1935.

TAXATION OF SHARES OF STOCK OF FEDERAL SAVINGS AND
LOAN ASSOCIATIONS OWNED BY INDIVIDUALS

Dear Sir:

Replying to your request for an opinion on this subject, it is my opinion that shares of stock of Federal Savings and Loan Associations owned by residents of Florida are taxable under the Intangible Tax Law of Florida, since the Act of Congress authorizing the organization of such associations and providing certain exemptions from taxation, does not exempt from State taxation the shares of stock of such associations owned by individuals.

December 6, 1935.

METHOD OF DISTRIBUTION OF THE PROCEEDS DERIVED FROM
FORECLOSURE OF TAX SALE CERTIFICATES HELD BY
THE STATE

Dear Sir:

I have your letter requesting my opinion upon the following question:

In the event of a foreclosure of tax sale certificates held

MISCELLANEOUS

by the State would the proceeds of sale derived therefrom be distributed to the taxing units interested in the tax sale certificates in proportion to their respective interests or would the State taxes with interest be required to be paid in full and the balance distributed to the taxing units interested in proportion to their respective interest?

Chapter 17,442, Laws of Florida, Acts of 1935, repealed the sections of Chapter 14,572, Laws of Florida, Acts of 1929, authorizing the foreclosure of tax sale certificates held by individuals and the State and which prescribed the procedure for such foreclosures. However, there are other provisions of law which permit the foreclosure of tax sale certificates held by the State. See Sections 896 and 5034, Compiled General Laws of Florida, 1927; *City of Bradenton versus Lee*, 162 So. 139.

It is my opinion that in the event of the foreclosure of tax sale certificates held by the State the proceeds derived from the sale would be distributed to the taxing units interested in the tax sale certificates in proportion to their respective interest. In such event no preference would be given to the State and it would share in the proceeds of the sale in proportion to its interest in the tax sale certificates and in the same manner as would any other taxing unit.

March 24, 1936.

**CORPORATIONS—TAXATION FOREIGN CORPORATION WHOSE
PERMIT HAS BEEN CANCELLED MUST PAY TAX UNDER
CHAPTER 14667 OF 1931 BEFORE RECEIVING
ANOTHER PERMIT**

Dear Sir:

In your letter of the 21st instant you refer to Chapter 16880, Acts of 1935, which provides for the cancellation of permits of foreign corporations delinquent for a period of three years under Chapter 14677, Acts of 1931, and state that the question has now arisen whether, after the cancellation of the permit of a foreign corporation as provided for in Chapter 16880, it could again re-enter the State as in the first instance, as though it had never before been issued a permit and without paying the taxes due under Chapter 14677 at the time its former permit was cancelled.

It is my opinion that the permit of a foreign corporation having been cancelled as provided for and required by Chapter 16880, for failure for three years to comply with Chapter 14677, could not re-enter the State and be granted another permit without the payment of the delinquent taxes for which its former permit had been cancelled.

MISCELLANEOUS

It is my opinion that Chapter 16880 is complementary to Chapter 14677, and that the two acts should be considered and construed in *pari materia*. Chapter 14677 is primarily a revenue measure and a corporation could not evade the payment of the tax thereby imposed, by allowing its permit to be cancelled, and then re-enter and claim another permit as if it had not become delinquent in the payment of such tax.

December 6, 1935.

AUTO TRANSPORTATION TAX—AMOUNT DUE TOWN OF WELLBORN, WHICH WAS ABOLISHED BY THE LEGISLATURE, MAY BE PAID TO THE BOARD OF COUNTY COMMISSIONERS

Dear Sir:

I have your letter in which you state the following:

"On July twenty-seventh, 1932, this office issued Warrant No. 12706 in amount \$25.00, representing portion due the Town of Wellborn as its pro rata shares of Auto Transportation Tax collected by this office.

For some reason the officials of the Town of Wellborn failed to have this Warrant cashed and since that time the Town charter has been surrendered."

I find upon investigation that the Town of Wellborn was abolished by the Legislature by Chapter 15,586, Laws of Florida, Acts of 1931.

It is my opinion that you should request the return of the Warrant referred to and upon its return cancel it and issue another Warrant for the same amount to the "Board of County Commissioners of Suwannee County, as Trustee for Town of Wellborn". Under Chapter 15,586, *supra*, and Section 3084, Compiled General Laws of Florida, 1927, the Board of County Commissioners of Suwannee County is authorized to accept the payment of the amount due by the State to the Town of Wellborn.

September 3, 1936.

**PERSONAL PROPERTY TAX—LEVY ON AFTER-ACQUIRED
PERSONAL PROPERTY**

Dear Sir:

Your recent letter, enclosing copy of letter by you received from _____, has come to my attention, and answer has been delayed pending a thorough study and consideration of the matters involved.

MISCELLANEOUS

Senator _____ letter disclosed that the Tax Collector in Duval County is encountering difficulty in collecting personal property taxes levied against certain of the merchants, and makes inquiry as to whether or not a tax collector would be authorized to levy, for unpaid personal tax assessments, upon a stock of goods, or any part thereof, acquired subsequent to the assessment in question.

I have carefully examined the law and I am of opinion that such levy, under such circumstances, is authorized.

I respectfully refer you to my opinion under date of March 28, 1935, rendered to you. In that opinion I expressed the view that in collecting personal property taxes which were levied and assessed against the taxpayer because of the ownership of tangible personal property, the county tax collector is authorized to seize and sell all personal property, both tangible and intangible, belonging to the taxpayer, within the county where the levy and assessment were made. I am of the view that this personal property, subject to seizure and sale, includes property acquired subsequent to the date of the assessment, but prior to the levy and sale.

August 5, 1936.

TAXATION—ASSESSMENTS REQUIRED BY CONSTITUTION AND
STATUTES LISTED

Dear Sir:

Replying to your letter of this date, requesting an opinion on the following matters, I beg to advise:

Section 6 of Article XII of the Constitution of Florida levies a tax of one mill on the dollar on all taxable property in the State. This cannot be reduced or varied.

The following millages are required by statute to be levied for the following purposes:

For the maintenance and support of the State Board of Health, $\frac{1}{2}$ of one mill—Section 3172, Compiled General Laws of Florida, 1934 Supplement; this cannot be reduced or varied except by the Legislature.

State Livestock Sanitary Board, $\frac{1}{2}$ of one mill—Section 3331, Compiled General Laws of Florida, 1934 Supplement; this cannot be reduced or varied.

State Prison Fund, $\frac{3}{8}$ of one mill, or as much thereof as may be necessary—Section 8615, Compiled General Laws of Florida, 1927; this may be reduced only to the extent that such reduction would not render the fund insufficient for the purposes for which said levy is made.

State Text Book Fund, $\frac{3}{4}$ of one mill—Section 889, Compiled General Laws of Florida, 1927; the governor is authorized to reduce this

MISCELLANEOUS

millage as long as such reduction will not cause a deficiency in the amount necessary to carry out the provisions of the law relating to free text books.

Pension Fund, $3\frac{1}{2}$ mills, or as much thereof as may be necessary—Section 2111, Compiled General Laws of Florida, 1927; this millage may be reduced to such figure as will raise the necessary funds with which to meet the pension roll. Section 2112, Compiled General Laws of Florida, authorizes the governor to reduce the millage provided for in Section 2111 when in his judgment the amount so assessed will be more than the amount required to pay the pensioners authorized by statute.

June 11, 1935.

TEMPERANCE COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 496,
CHAPTER 16774 OF 1935—STATUS OF REVENUES THEREUNDER
AND UNDER CHAPTER 15884, ACTS OF 1933

Dear Sir:

This acknowledges your communication of June 7th, wherein you inquire whether or not money collected by the County Tax Collectors for malt and vinous beverage licenses and for spirituous beverage licenses, that will permit the selling of such beverages from the present time until October 1, 1935, should be reported to and remitted to the Director of the State Beverage Department or to the State Comptroller.

As to the malt and vinous beverage licenses for the sale of beverages of less than 3.2% alcohol by weight, it is my opinion that these licenses will have to be issued in accordance with the 1935 Act; but the license fees to be charged between now and October 1, 1935, are not set out.

Section 19(a) of the Act of 1935 provides that the 1933 Act shall not be repealed until it becomes inconsistent with the Act of 1935. Therefore, in granting such licenses you should charge the schedule of fees provided for in the Act of 1933.

As to licenses for the sale of intoxicating liquors, permitting such sale between now and October 1, 1935, Section 8 (a) of the Act of 1935 provides for this situation.

All moneys in connection with licenses of both types should be remitted to the Director and not to the State Comptroller.

You also inquire whether or not, after reserving a sufficient amount of such funds to meet the operating expenses of the Department, the balance should be placed to the credit of the State School Fund or the General Revenue Fund.

MISCELLANEOUS

As to this question, it is my opinion that the Act of 1935 governs, and therefore, under Section 18 thereof the balance of moneys derived from the sale of both types of licenses herein discussed should go to the credit of the General Revenue Fund.

Trusting this answers your inquiry, I am

March 26, 1935.

TAXATION CONNERS HIGHWAY UNDER LEASE TO STATE

Dear Sir:

This acknowledges receipt of your letter of March 20, to which is attached a copy of a letter addressed to you by the Honorable C. B. Treadway, Chairman of the State Road Department, with reference to the assessment of State and County taxes against Conners Florida Highway.

On August 20, A. D. 1934, I rendered to you the following opinion:

"I have your letter in which you request my opinion upon the following questions:

(1) Is that part of the Conner's Highway in Martin County, which is privately owned and which is leased by the State Road Department, subject to taxation by the State and County?

(2) If you answer the first in the affirmative, should the road be assessed as a whole or should the part in each section be assessed separately?

Under our Constitution and laws, all property is subject to taxation except certain property which may be exempted by law. There is no statute which exempts from taxation a privately owned toll road which is leased by the State Road Department.

We do not have a statute which gives a method for assessing a toll road, hence, it must be assessed in the same manner as other property is assessed.

It is my opinion that:

(1) your first question should be answered in the affirmative; and,
(2) that part of the toll road in each section must be assessed separately and in the same manner as other property is assessed. See Section 920, Compiled General Laws of Florida, 1927."

I am advised that the above quoted opinion has been followed by the County Tax Assessors of Okeechobee and Martin Counties in assessing the State Highway known as Conners Florida Highway. The opinion was rendered during my absence from my office and without all of the facts in the case being presented.

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The facts upon which the opinion was based were materially different from the facts concerning the Conners Florida Highway, and for this reason what was said in that opinion cannot apply to this highway.

The Honorable C. B. Treadway, Chairman of the State Road Department, in a letter of March 19, 1935, addressed to you, said that from the time the State Road Department and the owners of the highway entered into an agreement concerning the same, it has been the intention of the parties that it "should become a part of the highway system, and that although the owners did not and have not at his time actually parted with the legal title to all of the highway, such title was simply retained for the benefit of the State Road System until such time as the funds allocated to the State Road Department will allow it to purchase the whole road. * * * the entire road has been free from tolls and has been maintained by the State as a State road and has been open to the public for that purpose."

Based upon the facts concerning the Conners Florida Highway, it is my opinion that it is not subject to taxation. You will please consider my opinion of August 20, 1934, above referred to, as having been withdrawn and cancelled.

March 8, 1935.

TAXATION—ROADS AND BRIDGES—APPORTIONMENT OF FUNDS
BY COUNTY TO MUNICIPALITIES.

Dear Sir:

I am in receipt of your letter of the 6th instant, making inquiry as to when road and bridge funds collected by the County within incorporated towns should be apportioned to them.

In reply I refer you to Section 2453, Compiled General Laws of Florida, 1927, which provides that one-half of the County tax for road and bridge purposes realized on property in incorporated cities and towns shall be turned over to said cities and towns to be used in repairing and maintaining the roads and streets thereof.

The statute does not designate any particular time for this payment but the statutes and decisions of our Supreme Court indicate that such payment should be made when the funds are collected. In this connection, I refer you to the following decisions of our Supreme Court which you will find of interest and helpful with reference to the rights and duties of municipalities to secure such payments:

Pippin v. State, 73 Fla. 385, 74 So. 653;

Dade Co. v. City of Miami, 77 Fla. 786, 82 So. 354;

City of Port Tampa v. Hillsboro Co., 102 Fla. 962, 136 So. 725;

Pinellas Co. v. City of St. Petersburg,

——— Fla. ———, 136 So. 523.

MISCELLANEOUS

January 12, 1935.

TAXATION—CRIMINAL LIABILITY OF LEASSEE FOR WORKING
TIMBER FOR TURPENTINE WHERE TURPENTINE RIGHTS
HAVE BEEN SEPARATELY ASSESSED AND TAXES
PAID THEREON*Dear Sir:*

This will acknowledge receipt of your letter of January 8th, in which you state that there is a tract of land in your County which was sold for delinquent taxes and the tax certificate is now held by the State. After the sale of the certificate, the owner of the land executed a lease covering the right to work the timber thereon for turpentine purposes. After the lease was executed, the turpentine rights were assessed under Section 922, Compiled General Laws, separately from the land, and all taxes assessed against the turpentine rights have been paid. At the present time, the tax sale certificate which was issued against the land, and which included the turpentine rights, is outstanding and in the hands of the State.

You request my opinion as to whether or not under this State of facts the lessee will be subject to prosecution under Sections 7397 and 7398, Compiled General Laws, or under either Section, if he proceeds to work the timber for turpentine purposes.

It is my opinion that the lessee, under the facts given by you, will be subject to prosecution under Section 7397, *supra*, if he undertakes to work the timber for turpentine purposes. Section 7398, *supra*, does not apply in a case where the turpentine rights and the land are assessed separately. However, it would apply as to the tax sale certificate, which is now outstanding and in the hands of the State, because this certificate represents the assessment against the land and turpentine rights. Section 7327, *supra*, seems to apply to a lessee of turpentine rights where the owner of the land has not paid the taxes thereon, even though the lessee may have paid the taxes assessed against the turpentine rights.

April 5, 1935.

TAXATION—TAX ASSESSOR, CHANGING ROLL IN HANDS OF
TAX COLLECTOR*Dear Sir:*

I have your letter of April 3rd, in which you call attention to my opinion of July 21, A. D. 1931, (page 673, Biennial Report of the Attorney General, 1931-1932) and my opinion of March 27, A. D. 1935, addressed to the Comptroller, which opinions deal with the power of the Tax Assessor to correct errors in the tax roll after it has been de-

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livered to the Tax Collector. I note that you feel that there is a conflict between these opinions. It is your view that the opinion of July 21, A. D. 1931, authorizes the County Tax Assessor to correct errors on the tax roll after it has been delivered to the County Tax Collector, whereas, it is your view that the opinion of March 27, A. D. 1935 forbids the Assessor to do so.

In the opinion of July 21, A. D. 1931, I stated that the Tax Assessor does have authority to correct errors in the assessment roll after it has been delivered to the Tax Collector and that if a *reduction* results by virtue of the correction, the Tax Collector should be guided and controlled thereby in making his collection.

In the opinion of March 27, A. D. 1935, I said that the authority of the Tax Assessor to correct errors in the tax roll after it has been delivered to the Tax Collector "is limited to making necessary changes and amendments of the roll to make it conform to the 'form of things' required by law to produce a valid tax roll". The opinion of July 21, A. D. 1931, does not say that the Tax Assessor has authority after the tax roll has been delivered to the Tax Collector to *reduce* the amount of the *valuation* which he has placed on a piece of property although he may, after delivery of the tax roll to the Tax Collector, discover that he has made an error in fixing the valuation thereon. The *reduction* referred to is a *reduction in the amount of the taxes* shown on the tax roll. The errors that may be corrected in this connection being such as the following:

1. If a higher millage was used than was authorized, this may be corrected and will result in reducing the amount of the taxes;
2. If there has been an error in computing the taxes such as multiplying the valuation by the millage or in adding together the various items that make up the total taxes, this may be corrected so that the corrected total will be shown. This may likewise result in *reducing the amount of the taxes*.

The authority of the Tax Assessor to correct errors or omissions referred to in that opinion was confined to making such corrections and amendments on the tax roll as may be necessary to make it conform to the "form of things".

On April 11, A. D. 1933, (page 115, Biennial Report of the Attorney General, 1933-1934) I rendered an opinion to the Comptroller as to his "authority to accept, or authorize the acceptance by tax collectors or clerks of the Circuit Court of taxes or the redemptions on lands that apparently are assessed at too high a figure" in which I said, " * * * when the tax assessor has exercised his judgment as to values, and the Board of County Commissioners have held their hearing, after due notice to all property owners, that then the assessment so adjudged shall stand,

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unless the Court of Chancery having been appealed to by a property owner, and after taking testimony as to values, legality, etc., should decree otherwise".

I have carefully re-examined the opinions of July 21, A. D. 1931, April 11, A. D. 1933, and March 27, A. D. 1935, the statutes, and the Supreme Court opinions on the subject and I am now of the opinion that:

1. There is no conflict between the opinion of July 21, A. D. 1931, and the opinion of March 27, A. D. 1935;

2. Each opinion correctly states the law as to the authority of the Tax Assessor to correct errors appearing on the tax roll after it has been delivered to the Tax Collector. However, the Supreme Court in the case of *ESTATE ex rel RANGER REALTY CO. versus LUMMUS*, Tax Assessor, et al., 149 So. 650, indicated that such corrections may be made on the tax roll and that it is not necessary to prepare a supplemental roll as suggested in the opinion of July 21, A. D. 1931.

I appreciate the fact that the question of the authority of the Tax Assessor to correct errors, after the tax roll has been delivered to the Tax Collector, in the valuation he has placed on a piece of property in a serious one throughout the State. I also realize that if the Tax Assessor does not have the authority to correct such errors that occasionally some hardships will result therefrom. However, I am certain that the statutes of Florida as construed in the case of *STATE ex rel RANGER REALTY Co. versus LUMMUS*, Tax Assessor, et al., supra, do not authorize the Tax Assessor, after the tax roll has been delivered to the Tax Collector, to make any change in the valuation he has placed on a piece of property upon the tax roll.

October 24, 1936.

TAXATION—CHAPTER 17,550, SPECIAL ACTS OF 1935

Dear Sir:

I am in receipt of your letter of the 22nd instant referring to Chapter 17,550, Laws of Florida, Special Acts of 1935, which is an Act to permit the Board of County Commissioners of Highlands County, Florida, to cancel all taxes levied or assessed in said county, except for State purposes, against any lands in consideration of the owner of such lands conveying or causing to be conveyed to the Trustees of the Internal (Improvement) Fund other lands of the value equal to the amount of taxes so cancelled. You state you have an inquiry as to whether an order from the State Comptroller or State Treasurer must be had before taxes may be cancelled under said statute.

MISCELLANEOUS

In reply your attention is directed to the fact that this is a Special Act, applying only to Highlands County and applying only to taxes other than for State purposes, and I find nothing in said Act which appears to contemplate or to authorize an order from the State Comptroller, the State Treasurer, or any other State official for cancellation of taxes by the Board of County Commissioners under the provisions of said Act.

December 30, 1936.

TAXATION—INTEREST AND SINKING FUNDS—PAYMENT WITH
WITH BONDS DISCUSSED—CHAPTER 17401, LAWS OF
FLORIDA, 1935

Dear Sir:

I acknowledge receipt of your letter of December 29, in which you enclose a letter from Honorable _____, Clerk of the Circuit Court, Sarasota County, in which he inquires whether or not he has authority under Chapter 17401, Laws of Florida, 1935, to accept bonds in payment of part of taxes due under the following statement of facts:

"A certain owner of cut-over lands in this county owes taxes in the approximate amount of \$5,000 and has tendered in the settlement thereof \$2,200 in cash and the balance in bonds of the taxing district formerly known as Verna."

It is impossible to answer Mr. _____ letter without a more detailed statement. Chapter 17401 is an act providing that taxes levied for the payment of interest and for a sinking fund on bonds may be paid in said bonds at par.

Section 1 of the act provides that the Boards of County Commissioners, City Commissioners, Tax Collectors or Clerks shall receive bonds, delinquent interest coupons or other delinquent obligations of said taxing districts in the redemption of liens from tax sales and in payment of all liens or evidence of delinquent taxes due which were levied for the payment of interest or sinking fund on said bonds or other obligations due thereon. The said section further provides that he shall redeem and pay all other parts and portions of the particular tax levy levied against said lands when he offers to redeem the said property by the payment in bonds.

Section 1 also provides that when the bonds involved are serial rather than term bonds such serial bonds may be accepted only under such limitations as to maturity dates as the governing authority of the county, etc., may impose and that such limitation shall be authorized by resolution adopted by the said governing authority affected.

Section 1 further provides that a levy of a tax for interest and sinking fund on one issue of bonds shall not be paid in bonds of a different issue.

MISCELLANEOUS

Section 4(a) provides that the Clerks of the Circuit Court are authorized to accept at par any and all bonds, certificates of indebtedness, and past due interest on the same, of any legally abolished municipality in payment, cancellation and satisfaction of any tax sale certificates and/or delinquent taxes held by the State or county against said lands in such county or counties. It is further provided that no bonds shall be accepted by the Clerk unless and until that portion of any such delinquent tax certificate going to the State of Florida shall have been paid in cash by the person or persons presenting such bonds or other evidence of indebtedness.

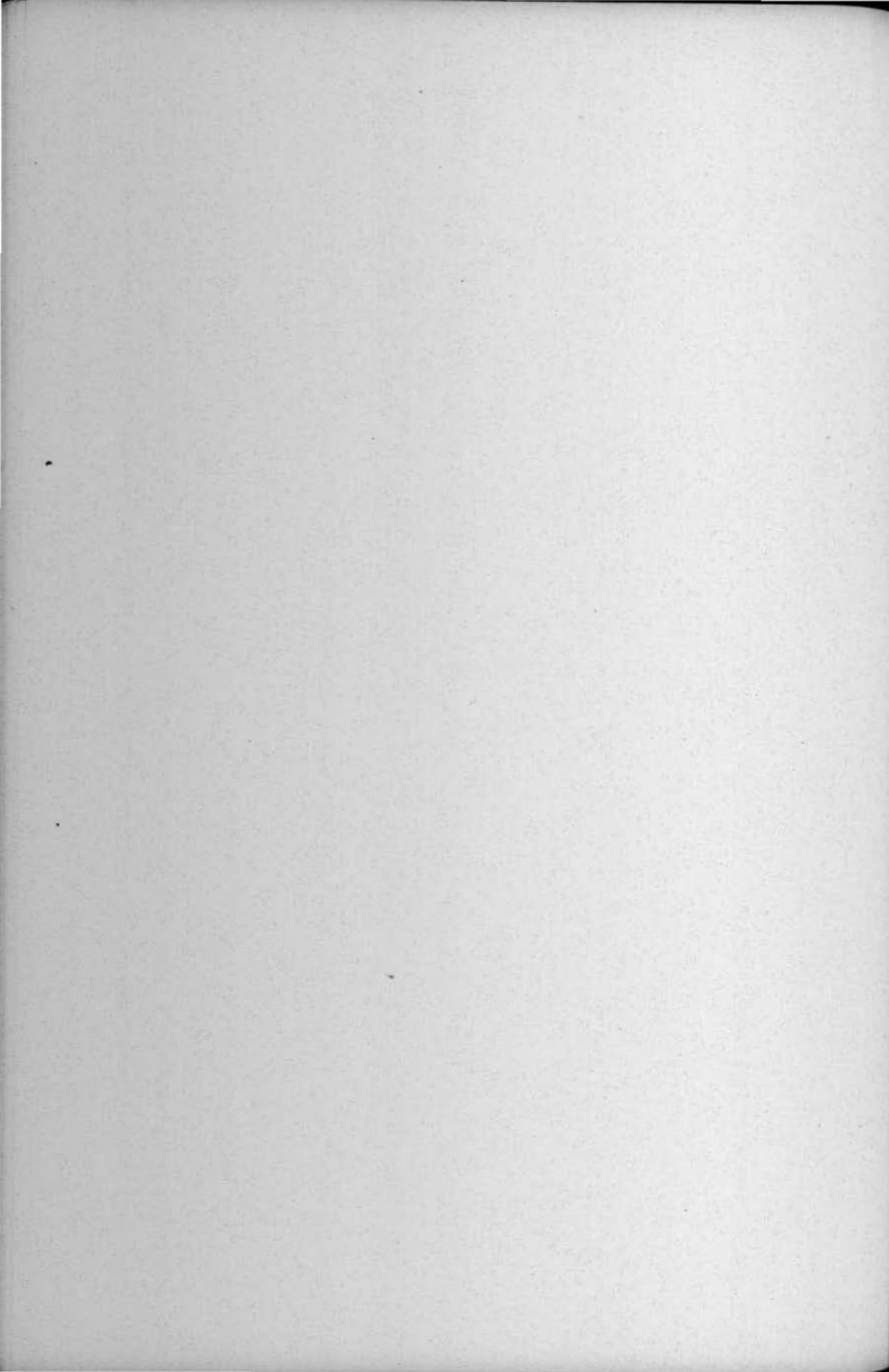
Apparently Section 4 (a) authorizes the acceptance of bonds of an abolished municipality in payment of county taxes. If so, Section 4(a) is broader than the title of said act, which only provides for the payment of taxes levied for the payment of interest or sinking fund requirements by the bonds of that particular issue and to such extent would be invalid in my opinion.

I am therefore of the opinion that if bonds of the abolished municipality of Verna are offered in payment of the county taxes generally, the said bonds should not be accepted.

CHAPTER II.

STATE BOARD OF ADMINISTRATION

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STATE BOARD OF ADMINISTRATION

SECTION 1

KANNER BILL (Chapter 15891 of 1933)

July 1, 1936.

BOARD OF ADMINISTRATION—SUMTER COUNTY—TRANSFER OF FUNDS FROM KANNER BILL ACCOUNT TO INTEREST AND SINKING FUND ACCOUNT, PURSUANT TO RESOLUTION OF BOARD OF COUNTY COMMISSIONERS

Dear Sir:

This acknowledges receipt of your letter of July 1, 1936, with enclosure of copy of resolution adopted by the Board of County Commissioners of Sumter County, under date of June 27, 1936.

This resolution, in effect, directs and authorizes the Board of Administration to transfer from the Kanner Bill account, for the issues of Sumter County countywide bonds, to the Interest and Sinking Fund account of said countywide issues, the gasoline tax balance credited to the said Kanner Bill account, as of the date of the consideration of said resolution by the said State Board of Administration, with the proviso that said Board of County Commissioners does not rescind its prior action, accepting the terms of said Kanner Bill, and that future accruals of gasoline tax moneys shall continue to be credited to the so-called Kanner Bill account.

I note that, at a meeting of the Board of Administration, held to-day, said Board agreed to make such transfer, subject to my written opinion as to the legality thereof. This will advise that I am of the opinion that the Board of County Commissioners, pursuant to Section 14, sub-section (g), of Chapter 14486, Laws of Florida, Acts of 1929, as amended by Chapter 15891, Laws of Florida, has authority to direct and authorize such transfer; and the Board of Administration likewise has authority to comply with such direction and authorization. It is to be noted that the resolution in question does not operate to revoke said County's adoption of the terms of said Chapter 15891, so far as future accruals of gasoline tax moneys are concerned.

June 19, 1936.

BOARD OF ADMINISTRATION—BREVARD COUNTY—SALE OF SECURITIES HELD IN INTEREST AND SINKING FUND

Dear Sir:

This refers to your letter of June 16, 1936, in which you advise that, prior to the creation of the Board of Administration, the Board

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of County Commissioners of Brevard County accepted \$44,000.00 of Town of Palm Bay, 6% Street Paving bonds in settlement of claims against various closed banks, which bonds were turned over to the Board of Administration, in August, 1930, pursuant to Chapter 14,486, Acts of 1929. I assume that, at the time of the turnover in question, such bonds came to the Board of Administration as a part of an interest and sinking fund.

You state that you have been furnished with resolution adopted by the Board of County Commissioners of said county, purporting to authorize and direct the Board of Administration to sell these bonds to a private party, at a named price. You further state that the Town of Palm Bay has ceased to exist, as a municipality, and that the County Commissioners in question desire that such sale be made in order that the private party may use such bonds in the payment of taxes heretofore levied, presumably against such parties.

You request my opinion as to whether or not the Board of Administration may legally sell, at the price of 10 flat, the bonds in question.

It does not appear, from your letter, but you orally informed me, that these bonds have not yet matured. I am of the opinion that your question should be answered in the negative.

At the time such bonds were remitted to the Board of Administration, they were not remitted or turned over as collateral security for any deposits in banks. They, therefore, occupied, and now occupy, the status of bonds held in an interest and sinking fund account, as an investment. In such a situation, in line with my opinion, previously expressed on various occasions, I am of the view that the Board of Administration has no authority, under the law, to dispose of bonds held in an interest and sinking fund investment account, at prices greatly below their par value, particularly where it appears that such bonds are not approaching maturity.

March 20, 1936.

**BOARD OF ADMINISTRATION—APPLICATION OF GASOLINE TAX
MONEY CREDITED TO JENSEN ROAD AND BRIDGE DISTRICT
UNDER CHAPTER 17,075, LAWS OF FLORIDA, ACTS OF 1935**

Dear Sir:

I have received your letter of March 19, 1936, enclosing your file relative to the above matter.

It appears, from your letter, that gasoline tax moneys credited to this District since October 1, 1935, have been held in a suspense account, and now amount to \$2,666.10. You ask that I advise you, upon

KANNER BILL (Chapter 15891 of 1933)

the return of your documents, which are enclosed herewith, if you are authorized to use these gasoline tax moneys so held in the suspense account, for the purchase of bonds at market prices, with the consent and approval of the Commissioners of Jensen Road and Bridge District, under the provisions of Chapter 17,075, above referred to.

After a careful examination of these documents, I am of opinion that such gasoline tax moneys may properly be used by you for such purpose.

March 10, 1936.

**BOARD OF ADMINISTRATION—HILLSBOROUGH COUNTY—COM-
PROMISE FRANCIS W. PARKER, ET AL, TRUSTEES HILLS-
BOROUGH COUNTY, \$610,000 PALMA CEIA BOND ISSUE,
ETC., VS. HARTFORD ACCIDENT & INDEMNITY
COMPANY, A CORPORATION**

Dear Sir:

This will acknowledge receipt of your letter of March 4, 1936, to which you attached an agreement dated February 14, 1936, signed by the Board of County Commissioners of Hillsborough County, agreeing to accept \$2,000.00 in cash, in settlement of a suit filed October 31, 1936, by the above parties, said suit having been instituted against the Indemnity Company above named, upon a surety bond held by the County Commissioners, in the amount of \$10,000.00, this suit being now pending in the United States District Court for the Southern District of Florida.

You also enclosed copy of letter dated November 21, 1935, from the Attorney for Hillsborough County to the County Commissioners, expressing his opinion, and recommending compromise of this matter for \$2,000.00. Your letter disclosed that the Citizens Bank & Trust Company of Tampa closed in July of 1929, prior to the creation of the Board of Administration, at which time it appears that the Bond Trustees had a deposit therein of some \$46,000.00, secured by a \$10,000.00 surety bond of the Hartford Accident & Indemnity Company, together with a blanket bond of the United States Fidelity & Guaranty Company; and it further appears from your letter that, prior to the creation of the Board of Administration, liability on the blanket bond was settled for \$24,084.55.

You further state that on December 2, 1930, the Liquidator of said Citizens Bank & Trust Company turned over to the Board of Administration, his certificate in the amount of \$21,982.70, since which time six dividends, aggregating 25.8%, have been paid thereon, leaving a balance due and owing, on account of said deposit, of \$16,293.34. You further state that Mr. Sutton advised that the amount of the claim against the Hartford Accident & Indemnity Company has been reduced by divi-

KANNER BILL (Chapter 15891 of 1933)

dends, and that the balance of the claim now, not including the interest on the account, amounts to approximately \$2,750.00, and that this is the claim which the County desires settled for \$2,000.00.

You further state that the Board of Administration has requested that the matter be referred to this office for legal advice, as to the authority of the Board of Administration to sign the agreement enclosed with your letter.

The bond in question, upon which suit was brought, contains, according to the letter of the attorney for the Board of County Commissioners, the following provision:

"If the amount of the depositor's deposit at the time of the default of the bank exceeds the amount of this bond the surety shall be entitled to share with the depositor the amount of any dividend or payment received from the bank in the proportion that the amount of this bond bears to the total amount of the deposit at the time of the default of the bank. The surety shall be subrogated in the same proportion to all other rights of the depositor against any person or corporation as respects the default on the part of the bank; and the depositor shall execute all papers required and shall cooperate with the surety to secure to the surety such rights."

It thus appears, according to the letter of the County Attorney, that Hartford Accident & Indemnity Company was entitled to receive a credit for its proportionate part of what was received from the United State Fidelity & Guaranty Company, which amounted to \$5,238.85.

It appears that the Hartford Accident & Indemnity Company has raised a point in connection with the case, that there was no authority, in law, for the appointment of special bond trustees; and that the appointment of such trustees for this bond issue, was without authority of the Board of County Commissioners; and that, since the bond was taken in the name of the trustees, and not in the name of the County, any recovery to be had would have to be in the name of the trustees, and it is doubtful as to whether any recovery could be had on the bond.

I concur in the opinion rendered by the County Attorney to the Board of County Commissioners, and enclosed with your letter, if the facts therein stated be correct. I am, therefore, of the view that, since the Board of County Commissioners recommends this settlement and, since it is doubtful if any recovery could otherwise be had, that the Board of Administration is authorized to effect compromise of this transaction in accordance with the agreement submitted by you.

KANNER BILL (Chapter 15891 of 1933)

March 16, 1936.

BOARD OF ADMINISTRATION—LOST TRUST RECEIPT AS TO
BONDS DEPOSITED WITH BOARD OF ADMINISTRATION—
MARION COUNTY*Dear Sir:*

You have submitted to me your file showing the deposit of certain bonds of Marion County, Florida, with you, to be held for the purpose of applying partial payments thereon from the receipt of funds applicable thereto. When these bonds were deposited with you, your file reflects that a trust receipt was executed by you, as County Treasurer Ex Officio. You wish to be advised as to whether, it now appearing that said person has lost the original receipt, a duplicate may be issued therefor. I respectfully refer you to my opinion under date of July 16, 1931, dealing with certain lost coupons on bonds. The question there presented was whether or not the State Treasurer should permit the alleged owner of such coupons to put up indemnity bond to protect the State Treasurer in the payment of claims for such lost coupons. I then advised as follows:

"Under the law of the State of Florida, there is no duty resting upon the State Treasurer to honor or pay out any State moneys, except upon the return to him of the coupons or bonds, etc. There is no duty resting upon the State Treasurer, and no law authorizing him, to work out some other system of protection to the State than the surrender of the original instruments, or, in the event of their loss, such instruments should be duly and properly reinstated by judicial order."

I still adhere to this opinion, and am of opinion that what was there said is applicable to the trust receipt in question, so that if it has been lost, it should be reestablished by proper judicial order.

March 18, 1936.

BOARD OF ADMINISTRATION—DIXIE COUNTY—LOSS BY PAYING
AGENT OF INTEREST COUPONS REMITTED FOR COLLECTION*Dear Sir:*

You have handed me file of correspondence which discloses that certain interest coupons were hitherto remitted by the alleged owner thereof, through the First National Bank of Tampa, to the Dixie County State Bank, the paying agent for said coupons. These coupons were remitted for collection, and it appears that the paying agent received them and, through mistake, they were either burned or lost. You wish to be advised whether payment may be made to the owner of such interest coupons without requiring their production.

KANNER BILL (Chapter 15891 of 1933)

I respectfully refer you to my opinion under date of July 16, 1931, dealing with certain lost coupons on bonds. The question there presented was whether or not the State Treasurer should permit the alleged owner of such coupons to put up indemnity bond to protect the State Treasurer in the payment of claims for such lost coupons. I then advised as follows:

"Under the law of the State of Florida, there is no duty resting upon the State Treasurer to honor or pay out any State moneys, except upon the return to him of the coupons or bonds, etc. There is no duty resting upon the State Treasurer, and no law authorizing him, to work out some other system of protection to the State than the surrender of the original instruments, or, in the event of their loss, such instruments should be duly and property reinstated by judicial order."

In view of the above opinion, to which I still adhere, I am of the view that payment may not be made of these coupons without requiring that they be reestablished by judicial order.

March 10, 1936.

**BOARD OF ADMINISTRATION—DUVAL COUNTY—DUTY OF BOARD
OF ADMINISTRATION TO REGISTER BONDS**

Dear Sir:

Referring to your letter under date of February 24, 1936, in which you advised that your office has received from the Florida National Bank of Jacksonville, certain Duval County 5% road bonds dated October 1, 1925, and due October 1, 1955, being bonds numbers 514, 517, 522 and 523, of the par value of \$1,000.00 each, which said bonds are now registered on the books of the Bond Trustees of Duval County in the name of Mrs. _____, together with enclosure of a letter signed by Mrs. _____, authorizing release of registration and requesting that the bonds be now registered in the name of a certain other party.

You wish to be advised whether you have the duty to register such bonds, in view of the fact that the bonds in question apparently make provision for their registration, as to principal only, at the option of the holder of the bonds, on the books of the trustees of county bonds of Duval County, Florida, or of such other officer or officers who may hereafter be authorized by law to perform the duties of said trustees, in the city of Jacksonville, Florida.

I beg to advise that the Board of Administration is a statutory trustee, possessing only such powers as are conferred upon it by the statutes under which it functions, or such as are necessarily implied therefrom.

KANNER BILL (Chapter 15891 of 1933)

There is nothing in the provisions of Chapter 14,486 to indicate that there is any duty, on the part of the Board of Administration, to register the bonds in question, and I am, therefore, of opinion that you have not the duty to comply with the request of the Florida National Bank of Jacksonville.

March 10, 1936.

**BOARD OF ADMINISTRATION—ST. JOHN'S COUNTY—PURCHASE
BY INVESTMENT ACCOUNT OF ITS OWN BONDS HELD IN
ANOTHER INVESTMENT ACCOUNT**

Dear Sir:

This refers to your letter supplemental to a letter received by this office under date of February 24, 1936, as to which latter letter I have previously advised you.

You now state that you have received a resolution from the Board of County Commissioners of St. John's County, authorizing the Board of Administration to purchase, at par, out of the cash balance in the interest and sinking fund of a \$2,200,000 issue of St. John's County bonds, sufficient of the bonds of such issue as will be needed to complete the exchange outlined in your letter of February 24, 1936. This resolution contemplates purchase of a requisite amount of bonds of the \$2,200,000 issue maturing in 1946 and 1956, respectively, from the interest and sinking fund investment account of a \$427,000 issue of bonds of said county, in which latter investment account certain of said bonds are held. You wish to be advised whether the Board of Administration has the power and authority to make such purchase.

Section 17, Chapter 14,486, Laws of Florida, Acts of 1929, provides in part as follows:

" * * * The Board of Administration may invest any funds to the credit of any county or special road and bridge district, in the hands of the State Treasurer, as County Treasury Ex Officio, by and with the consent and approval of the Board of County Commissioners or other governing body of such county or special road and bridge districts, in any bonds or treasury certificates of the United States or bonds of any county or special road and bridge district in the State of Florida, entitled to participate herein."

My construction of this provision of the statutes is that it simply accords a general power of investment and applies only to surplus moneys in the hands of the State Treasurer, as County Treasurer Ex Officio. If the moneys in an investment account of an interest and sinking fund are needed to meet matured interest or principal, then,

KANNER BILL (Chapter 15891 of 1933)

of course, such moneys should be applied to the payment of such matured principal and interest, and may not properly be invested in securities. If there is an available surplus over and above matured principal and interest, then such surplus may, in my opinion, properly be invested in securities of the type referred to in the Act. Even in such case, however, I am of opinion that, since the Board of Administration is a statutory trustee, it is bound to the use of good business judgment in making such investments. This would seem to require, as to contemplated investments, that securities be acquired at the lowest price for which they may be obtained.

Moreover, it seems to me doubtful whether this general power of investment would constitute an authorization to the Board of Administration to invest available surpluses to the credit of a bond issue, in bonds of that same issue.

Furthermore, so far as the \$427,000 account is concerned, I am of opinion that bonds held as an investment in that account might not properly be disposed of by the Board of Administration for a price of less than par plus accrued interest; and doubtless bonds of the \$2,200,000 issue of the 1946 and 1956 maturities might be acquired on the open market at prices less than this.

To sum up, it appears to me:

1—That it is doubtful whether the \$2,200,000 issue may invest in its own bonds.

2—If such investment may be made, sound business judgment would dictate that these bonds be secured at the lowest price.

3—Bonds held as investment in the \$427,000 account may not properly be disposed of at prices less than par plus accrued interest.

4—Any investment to be made, would have to be made out of surpluses.

In view of the doubt attendant upon such procedure as is suggested by the Board of County Commissioners, I respectfully refer you to the case of *State ex rel Pinellas County, et al, vs. Sholtz, Governor, et al*, 153 So. 736. That case dealt with the sale of securities held in interest and sinking fund accounts, and with the reinvestment of the proceeds of such sale. The Court held that there was no mandatory duty upon the part of the Board of Administration to make such a sale and to reinvest the proceeds. It was further suggested that the proper course of procedure, in order to determine the propriety and desirability of a reinvestment of sinking fund moneys, was for the Board of Administration, by bill in equity, filed by it in its capacity as statutory trustee, to submit to the approval of a chancellor the propriety of such reinvestment of sinking fund money. If the Board wishes to be protected in this transaction, it would seem desirable at least to follow such a course of procedure, as the matter is not at all free from doubt.

KANNER BILL (Chapter 15891 of 1933)

February 26, 1936.

BOARD OF ADMINISTRATION—ST. JOHN'S COUNTY—PURCHASE
BY SINKING FUND INVESTMENT ACCOUNT OF BONDS IN
ANOTHER SINKING FUND INVESTMENT ACCOUNT*Dear Sir:*

This refers to your letter of February 24, 1936, which, in turn, refers to my opinion under date of January 29, 1936, concerning the partial exchange of bonds maturing in 1946 and 1956, held in the investment account of the sinking fund of the \$2,200,000 issue of St. John's County Road bonds dated January 1, 1926, in payment of bonds of the same issue maturing January 1, 1936, such exchange and partial payment being made on the basis of 40% cash and 60% in bonds of said 1946 and 1956 maturities.

In the opinion last referred to, I advised, with the understanding that sufficient of the 1946 and 1956 maturities were available to consummate the transaction, that there was no objection thereto, subject to the limitations in my said opinion expressed.

You now state that all of the 1946 and 1956 maturities held in the investment account of the \$2,200,000 issue, have now been used in such exchange, and that there are \$24,000 of the 1936 maturities outstanding and unexchanged.

You further state that in the investment account of St. John's County \$427,000 issue of Refunding bonds are \$47,000 of bonds of the \$2,200,000 issue maturing in 1946 and 1956; and that the Board of County Commissioners of St. John's County have suggested that as many of these as are needed be used in exchange for the 1936 maturities of the \$2,200,000 issue still outstanding and unexchanged, exchange to be made on the basis of 40% cash, to be paid out of the investment account of the \$2,200,000 issue, and 60% in bonds of that issue, of 1946 and 1956 maturities; and that after such exchange has been made, cash payment of 100% be made out of the \$2,200,000 issue investment account to the \$427,000 issue investment account, for the 1936 maturities held in the investment account of the \$427,000 issue due to the exchange. You request my written opinion as to whether or not the transaction may legally be carried out in the manner outlined.

Apparently such transaction contemplates that the 1936 maturities still outstanding shall first be exchanged for the 1946 maturities now held in the investment account of the \$427,000 issue.

In line with my opinion under date of October 7, 1933, I have to advise that the 1946 and 1956 maturities now held in the investment account of the \$427,000 issue, may not be exchanged legally by the Board of Administration, for bonds of the same issue, which matured on January 1, 1936. As you know, the State Board of Administration

KANNER BILL (Chapter 15891 of 1933)

was created under the provisions of Chapter 14486, Acts of 1929, Section 14 of which was amended by Chapter 15891, Acts of 1933. Section 7 of that Act provides that all—securities—shall be held by the State Treasurer, as County Treasurer Ex Officio, for the special benefit of the County or District, respectively, by which such securities were turned over to said Treasurer, and used solely for the payment of principal and interest of the bonds for the payment of which the interest and sinking fund was created. The Supreme Court has previously, on numerous occasions, held that the State Board of Administration is a mere fiscal agent, and that its duties and powers must be found within the four corners of the statute creating it, or must arise by necessary implication from said statute. I cannot find any authority in the statute in question which would permit non-matured bonds held in an investment account, to be exchanged, par for par, with matured bonds, even though it be contemplated that later such matured bonds shall be paid at par, plus accrued interest, out of the investment account of another sinking fund.

I express no opinion at this time, upon whether or not the investment account of the \$2,200,000 issue may, if funds are available for such purpose, prior to effecting any contemplated exchange, purchase from the investment account of the \$427,000 issue, such amount of the 1946 and 1956 maturities of the former issue, as may be needed to effect the exchange with reference to the outstanding 1936 maturities.

February 4, 1936.

BOARD OF ADMINISTRATION—KANNER BILL—HERNANDO COUNTY'S OPERATION UNDER CHAPTER 15891, LAWS OF FLORIDA, FOR YEAR 1935-36

Dear Sir:

With your letter of January 29, 1936, which we have received, you enclosed resolution adopted by the Board of County Commissioners of Hernando County, Florida, on September 26, 1935, and estimate of revenues and expenses for the fiscal year ending September 30, 1936, together with other pertinent papers.

You request that upon the return of these documents, I furnished you with my opinion as to whether or not they constitute sufficient authority for the gasoline tax money distributed to Hernando County and allocated to all countywide Road bonds and time warrants, to be used under the provisions of Chapter 15891, Laws of Florida, Acts of 1933, commonly known as the Kanner Bill, for the purchase of bonds of said issues, as might be recommended by the County Commissioners and approved by the Board of Administration, pursuant to the provisions of said Act.

KANNER BILL (Chapter 15891 of 1933)

It appears from the resolution invoking the provisions of the Kanner Bill, that the Board of County Commissioners of Hernando County is desirous that its election to operate under the Kanner Bill be applicable only to countywide Road bonds and time warrants, but not to Special Road and Bridge districts located within said county.

I have examined the documents submitted by you, and it appears therefrom that the anticipated gasoline tax revenues for said fiscal year have not been included as to countywide bonds, in the estimates of taxes required to be levied, so as to reduce required ad valorem levies.

I am of opinion, from the documents submitted, that they constitute sufficient authority for the gasoline tax money distributed to Hernando County and allocated to countywide Road bonds and time warrants, to be used under the Kanner Bill for purchase of bonds of said issues, in accordance with the provisions of said Kanner Bill. I am further of opinion that they do not constitute sufficient authority, and indeed do not authorize use of gasoline tax moneys allocated to Special Road and Bridge districts within said County, to be used under the provisions of the Kanner Bill, for the purchase of bonds; and that as to such latter gasoline tax moneys, they may properly be credited to the interest and sinking fund account for said issues and applied to the payment of maturing interest coupons and bonds for which the gasoline tax money has been appropriated in the budget.

February 4, 1936.

**BOARD OF ADMINISTRATION—ORANGE COUNTY—RIGHT OF
ALLEGED BONA FIDE HOLDER TO COLLECT INTEREST
COUPONS ON STOLEN BOND**

Dear Sir:

I have received your letter of January 30, 1936, with various enclosures, including copy of my opinion under date of January 21, 1936.

That opinion dealt with a factual situation, in which it appeared that an Orange County 5% Road bond had been stolen; that, thereafter and before maturity, said bond was, by the thief, negotiated to certain bankers in Orlando; that it was negotiated by said bankers to another bank, and by the latter bank to one of its customers, who allegedly purchased the same for value, in good faith, without notice, and before the maturity thereof. Having, as it was alleged, so obtained the bond, this purchaser was making demand of the State Treasurer, as County Treasurer Ex Officio of Orange County, Florida, for payment of an interest coupon thereon. Simultaneously, the alleged original owner from whom it was claimed that the bond had been stolen, was demanding of said State Treasurer that he refrain from making such payment. In this situation, my opinion was requested as to whether

KANNER BILL (Chapter 15891 of 1933)

payment should be made or withheld. I advised that it should be withheld, until the disputed title to the bond and attached interest coupons should, by proper legal proceedings, be established.

You, in effect, take issue with this opinion, stating that it is at variance with the settled law, and you cite a number of authorities to the effect that a purchaser in good faith, for value, without notice, and before maturity of a negotiable, bearer, non-registered bond, acquires title thereto good as against an original owner, even though there may have been an intermediate theft of the instrument. With these authorities, of course, I am, and was at the time of rendering said opinion, familiar. Yet the situation presented for my opinion was not one in which it was definitely and finally established that all of the conditions precedent to acquisition of good title, existed and had been performed. These matters, on the contrary, were open and unsettled. Thus it is that if, in the face of notice not to pay, payment were made and it should later develop that the present bearer had not, in fact, acquired the instrument free of defects and infirmities, the State Treasurer would not be protected in making payment. Certainly, he should not be required to ascertain, at his peril, the validity of the title allegedly acquired by the present bearer.

Under such circumstances, therefore, I am yet of opinion that, until the title to the instrument has been properly adjudicated, payment should be withheld.

January 29, 1936.

BOARD OF ADMINISTRATION—ST. JOHN'S COUNTY—
REFUNDING OPERATIONS

Dear Sir:

This is in response to your communication of January 23, 1936.

The situation which appears from your letter is that on January 1, 1926, St. John's County issued \$2,200,000 of 5% road bonds, \$500,000 of which matured January 1, 1936; \$800,000 of which will mature in 1946, and \$900,000 in 1956. Heretofore, all except \$285,000 of the January, 1936 maturity (originally \$500,000) has been cared for by exchange of future maturities of the same issue, or otherwise. \$65,000 of the January, 1936, maturity are now held in the investment account of said issue, leaving a balance of \$220,000 of bonds yet to be cared for. In the investment account, you state that there are \$17,000 in bonds of the 1946 maturity and \$95,000 of bonds of the 1956 maturity; and that at the present time, there is also a balance of \$103,201.34 cash. At the present time, therefore, there is a balance of \$103,201.34 cash and a total of \$112,000 of said bonds in the investment account.

You state that the Board of Administration has been, by the Board of County Commissioners of St. John's County, by proper resolution,

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requested and directed to pay said outstanding matured bonds to the extent of 40% cash, and exchange the balance of said outstanding matured bonds from the bonds aforesaid maturing in 1946 and 1956, insofar as the proportion of 40% cash and 60% bonds is practicable. You further state that if these proportions are regarded, there is an insufficiency in the amount of \$4,798.96 of funds applicable, but that said amount, and more, will be credited to the interest and sinking fund account, upon receipt of the January, 1936, gasoline tax moneys and 1935 ad valorem collections, all of which would provide for the January 1, 1936, maturity.

You desire my opinion as to whether, when the said \$4,798.96 is made available, it will be legal for the Board of Administration to perform the request of the Board of County Commissioners of St. John's County.

It is my opinion, in line with my written opinion expressed under date of September 11, 1934, to which reference is here made, that there is no objection to such exchange, provided that the bonds are exchanged upon the basis of par, together with any unmatured interest coupons as of the date of exchange; the fact that only sixty per cent of said exchange is, so far as is practicable, to be effected by exchange of bonds, constitutes no objection to the forty per cent balance being made up by cash payment out of funds available for such payment.

February 1, 1936.

BOARD OF ADMINISTRATION—KANNER BILL—ACCEPTANCE
OF BID

Dear Sir:

This will acknowledge receipt of your letter of January 29, 1936, in which you state that prior to that writing, a certain sealed offer was received, pursuant to published notice, requesting the submission of such offers under the provisions of Chapter 15,891, Laws of Florida, Acts of 1933, commonly known as the Kanner Bill. You state that the offer in question was as follows:

"Pursuant to your request for sealed offerings to be opened at 10:00 O'clock, Wednesday, November 27th, 1935, I offer:

\$1,000 Glades County Special Road and Bridge
District No. 11—6% Bonds
Dated Jan. 1, 1926
Due Jan. 1, 1936
With July 1, 1930 ASCA.
Price: \$854.00

KANNER BILL (Chapter 15891 of 1933)

The above bond is offered on the basis of sixty-five cents for bond and sixty-five cents for coupons."

You further state that this bid, upon receipt, was referred to the Board of County Commissioners of Glades County, for its recommendation as to whether or not it should be accepted or rejected; and that said Board of County Commissioners adopted its resolution on December 2, 1935, relative to the above offering, said resolution reading, in part as follows:

"BE IT FURTHER RESOLVED, That under item "H"—Glades Co. Spl. R&B Dist. No. 11 6% Bonds, dated 1-1-26, Maturity date 1-1-36, Par Amount Offered \$1,000, Price Quoted \$854.00, 7-1-30 SCA, if this bond is one included in a suit F. L. Revell vs. Glades Co., the Board has agreed with the Hon. Doyle E. Carlton, Attorney for F. L. Revell to purchase same and it wishes to accept said offer and herewith requests that the State Board of Administration take up said bond as soon as funds are sufficient."

It appears from your letter that the Board of Administration has previously authorized purchase of this bond, as recommended by the County. You desire my opinion as to whether or not, when sufficient funds are on hand for the purchase of the bond, such transaction would be legal. It appears that no subsequent offers have been received, pertaining to said Special Road and Bridge District No. 11.

I am of the opinion that if you are satisfied that the bond in question was included in the suit in said resolution mentioned, it will be entirely legal and proper for you to make such purchase out of available funds.

January 21, 1936.

**BOARD OF ADMINISTRATION—ORANGE COUNTY—RIGHT OF
ALLEGED BONA-FIDE HOLDER TO COLLECT INTEREST
COUPONS ON STOLEN BOND**

Dear Sir:

You have submitted to me various papers which disclose that an Orange County 5% Road bond dated July 1, 1926, and due July 1, 1946, was heretofore stolen; that the bond in question was negotiated by the thief to certain bankers in Orlando, Florida, was by said bankers negotiated to another bank, which last bank negotiated it for value to one of its customers, who now holds the said bond, allegedly in good faith, and seeks to collect interest coupon No. 19 thereon in the sum of \$25.00, due January 1, 1936.

You state that the original owner of the bond from whom it was stolen has requested you not to pay the said interest coupon; and that

KANNER BILL (Chapter 15891 of 1933)

the present holder thereof is making demand upon you for the payment of the same. You desire my opinion as to whether or not you should pay or withhold payment of the interest coupon in question.

It is my opinion that you should withhold payment of this interest coupon, as well as payment of any subsequent interest coupons, or any part of the principal of said bond, until the parties claiming to be entitled thereto have, by proper proceedings, determined the title to the instrument.

I am returning herewith the papers handed me by you.

January 11, 1936.

BOARD OF ADMINISTRATION—PAYMENT OF INTEREST AFTER MATURITY ON PAST DUE BONDS—DADE COUNTY

Dear Sir:

You have handed me communication under date of December 11, 1935, from the Board of County Commissioners of Dade County, Florida, together with communication under date of December 9, 1935, from Fidelis Corporation, both of which express the view that the Board of Administration of the State of Florida should pay interest on certain bonds after the maturity thereof. While the bonds in question have matured, there has been no judgment rendered thereon which includes interest after maturity; and no separate judgment has been entered for interest after maturity of said obligations.

You desire my opinion as to whether or not the Board of Administration is authorized to pay interest on said bonds after the maturity thereof.

I have previously rendered an opinion under date of March 29, 1935, in which I expressed the view that the Board of Administration might not legally disburse funds in payment of interest from the maturity date of bonds deposited under trust receipt with you, after the principal of said bonds had been paid in full.

I have carefully considered the question you ask, and now advise as follows:

(a) That the Supreme Court of Florida has determined that interest on the matured principal of bonds, absent any judgment on said bonds or for said interest, is not collectible by mandamus against the State Board of Administration, even though the bond contract itself specifically provides for liability for interest at the contract rate until the bonds shall be paid.

State ex rel Center v. Sholtz, et al,
156 So. 746;

State ex rel Davis v. Lee,
156 So. 744.

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In the case first cited, the Supreme Court held that what was contemplated as the statutory duty owed to be performed, was payment at maturity.

(b) That, there being no duty to pay such interest and no authority in the Board of Administration Act (Chapter 14486, Acts of 1929 as amended), either expressly or by necessary implication, the Board of Administration is without legal authority, under such circumstances, to pay said interest. The Supreme Court has held that the Board of Administration, as to funds in its hands for payment of principal and interest of bonds, occupies the position of a statutory trustee, and has further held that it is trustee not only for the bondholders, but for the taxpayers whose interests may be involved. I, therefore, adhere to the view that there is no legal authority, absent any judgment for such interest, on the part of the Board of Administration to make such payment. The papers handed me by you are returned herewith.

December 28, 1935.

**BOARD OF ADMINISTRATION—MANATEE COUNTY—CHAPTER
16,805, LAWS OF FLORIDA, 1935.—AUTHORITY OF BOARD
TO EXECUTE RESOLUTION FOR SALE OF BONDS**

Dear Sir:

Referring to your communication of December 20, 1935, with which you enclosed proposed resolution prepared for adoption by the Board of Administration, in connection with Reconstruction Finance Corporation loans authorized to the Tampa Gap and Oneco Drainage Districts of Manatee County, Florida; and with which you also enclosed copy of resolution already adopted by the Board of Commissioners of Manatee County, Florida, I beg to advise that I have examined the proposed resolution by you submitted, and that I am of opinion as follows:

(a) That the Board of Administration has the power under Chapter 16,805, Acts of 1935, to adopt such a resolution.

However, it is to be noted that the authority and powers granted in paragraph A of the said Act shall be exercised by the Board of Administration only by and with the advice, consent and approval, evidenced by there being filed with said Board of Administration a certified copy of the resolution evidencing such advice, consent and/or approval, of the Board of County Commissioners or other governing authority of the unit to the credit of which the bonds to be sold belong.

(b) That in view of such last mentioned provision, the resolution submitted should be redrafted so as to show on its face the filing of such a resolution by the Board of County Commissioners involved.

This opinion should not be construed in any manner as dealing with the constitutionality of said Chapter 16,805.

KANNER BILL (Chapter 15891 of 1933)

December 28, 1935.

**BOARD OF ADMINISTRATION—CHAPTER 17,401, ACTS OF 1935—
AUTHORITY OF CLERK OF CIRCUIT COURT TO ACCEPT
BONDS IN PAYMENT OF TAXES**

Dear Sir:

This will acknowledge receipt of your communication of December 24, 1935, together with letter received by you from the Flagler County attorney with reference to the payment of 1934 taxes with obligations issued by Flagler County.

From your letter and the enclosure, it appears that the Florida East Coast Railway Company desires to pay the balance of its 1934 taxes, due the Bunnell Special Road and Bridge District, Shell Bluff Special Road and Bridge District, Halifax Special Road and Bridge District, Haw Creek Special Road and Bridge District; and the Interest and Sinking Fund of Flagler County with bonds of each District. The enclosure states that the taxes of each District or Sinking Fund so referred to will be paid, if permissible, with bonds of that particular District; and that the provisions of House Bill No. 296, Acts of the Legislature of 1935, which is Chapter 17,401, Acts of 1935, will be strictly complied with as to its terms.

You desire to know whether, if the procedure outlined in that statute is complied with, such bonds may be accepted in payment of said taxes.

You will note that the bonds or obligations authorized by said statute to be received must fall within the classes specifically set forth in Section 1 of said Act and that the provisions of said law may be invoked only by a strict compliance with its terms.

I am of the opinion that, as this law has not been passed upon by any court, the procedure outlined therein by way of payment of taxes, may be followed. This letter, however, expresses no opinion as to the constitutionality of the law involved.

December 16, 1935.

**BOARD OF ADMINISTRATION—PUTNAM COUNTY—AUTHORITY
TO PAY PORTION OF MATURITY**

Dear Sir:

This acknowledges receipt of your communication of December 13, 1935, in which you inquire as to whether or not the Board of Administration may legally allow consummation of the following plan proposed by the Board of Bond trustees relative to the July 1, 1926, Highway Bond issue due July 1, 1934:

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The Bond Trustees own thirteen of the twenty Highway bonds which matured on the above date, and are desirous of having the Board of Administration purchase ten of these bonds at 85, they in turn to deliver the remaining three bonds for cancellation, and consent to a waiver on the seven bonds owned by Special Road and Bridge District No. 2. In your letter you state that this purchase and surrender of bonds would result in cancellation of \$13,000 of matured bonded indebtedness for \$8,500, leaving the balance of \$7,000 in investment account of Special Road and Bridge District No. 2, which District is not in immediate need of funds. You further state that the Board of Administration was reluctant to accept this proposal in the light of my opinion rendered under date of August 8, 1935, to which reference is here made, and until I had approved the legality thereof.

It is my opinion that the contemplated transaction may not legally be carried out by the Board of Administration, for the reason that I am of the opinion that such payment would constitute a preferential payment, to the prejudice of the seven bonds of said issue, and said maturity in the investment account of Special Road and Bridge District No. 2, absent any consent on the part of said Special Road and Bridge District to such payment. Furthermore, I am of the opinion that the Board of Bond Trustees of Putnam County are not legally authorized validly to waive, on behalf of said Special Road and Bridge District, payment of those seven bonds.

November 26, 1935.

BOARD OF ADMINISTRATION—TAYLOR COUNTY—PAYMENT OF GASOLINE MONEYS TO COUNTY—CHAPTER 17036, ACTS OF 1935

Dear Sir:

This acknowledges receipt of your communication of November 26th. You enclose copy of resolution passed by the Board of County Commissioners of Taylor County November 4, 1935, requesting that \$2942.11 gasoline moneys credited to Taylor County be remitted to said county.

You have also enclosed copy of resolution of same date, specifically refusing to invoke the terms of Chapter 15891, Acts of 1933, commonly known as the Kanner Bill.

You have also enclosed certified copy of the estimated expenses and revenues for the three issues of County road bonds for the present fiscal year which began October 1, 1935. Such estimates show an anticipation of and appropriation of the estimated gasoline tax moneys.

You have also advised orally that the gasoline moneys were also appropriated in the budget for the preceding fiscal year.

The said Chapter 17036 purports to require the Board of Administration, upon resolution of the Board of County Commissioners,

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to pay said county a sum not in excess of one-half of the gasoline taxes allocated to such county. The Act is a "population act" and embraces Taylor County. Regardless of the constitutionality of said Act, which may be seriously questioned, it is my opinion that the Board of Administration has no authority to comply with said resolution requesting such payment of gasoline tax moneys, inasmuch as the appropriation made of such moneys for debt service requirements has precluded the county from diverting such moneys to any other purpose. See State ex rel. Florida National Bank at St. Petersburg vs. Sholtz, et al, 154 So. 876, 156 So. 15.

November 19, 1935.

**BOARD OF ADMINISTRATION ST. LUCIE COUNTY—RETURN OF
GASOLINE MONEYS DURING FISCAL YEAR 1935-1936—
CHAPTER 17041, ACTS OF 1935**

Dear Sir:

This acknowledges yours of the 15th, wherein you enclose certified copy of resolution adopted by the Board of County Commissioners of St. Lucie County October 31, 1935. This resolution requests the return to the Board of County Commissioners of all the gasoline tax moneys allocated to the countywide and special road and bridge districts in said county. This opinion does not apply to Jensen Special Road and Bridge District inasmuch as your communication states that you are awaiting additional data thereon.

You have also enclosed certified copies of the estimates of expenses and revenues together with the budget adopted and tax levies made by the Board of County Commissioners. These show that the gasoline tax moneys involved in this opinion have neither been appropriated to debt service purposes or to the purchase of bonds under Chapter 15691, Acts of 1933.

It is my opinion that the said Chapter 17041, Acts of 1935, is unconstitutional and would be so declared in the event the matter should be submitted to the courts. However, until a court of competent jurisdiction holds the Act unconstitutional, the Board of Administration will be protected in acting thereunder, and it may comply therewith.

November 19, 1935.

**BOARD OF ADMINISTRATION—FLAGLER COUNTY'S OPERATION
UNDER CHAPTER 15891, ACTS OF 1933, FOR THE FISCAL
YEAR 1935-1936**

Dear Sir:

This acknowledges your of the 15th together with enclosures.

It is my opinion that Flagler County has validly adopted the pro-

KANNER BILL (Chapter 15891 of 1933)

visions of the above mentioned statute with reference to certificates of indebtedness, Haw Creek Special Road and Bridge District, Shell Bluff Special Road and Bridge District and Bunnell Special Road and Bridge District, and that the Board of Administration should, therefore, credit to the "Kanner Bill" ledger the gasoline moneys allocated to said districts for use under the terms of said Act.

It is further my opinion that there has been an appropriation for debt service purposes of the gasoline moneys allocated to Ocean Shore Improvement District, and the same should, therefore, be credited to the Interest and Sinking Fund account.

October 18, 1935.

**BOARD OF ADMINISTRATION—DADE COUNTY—AUTHORITY TO
COMPLY WITH RESOLUTION WITH REFERENCE TO
REFUNDING OPERATIONS**

Dear Sir:

This acknowledges yours of the 17th, enclosing letter and certified copy of resolution of the Board of County Commissioners of Dade County, together with certificate of the Clerk of the Circuit Court with reference to the outstanding as well as exchanged bonds in the refunding operations of Dade County which are concerned in the transaction contemplated.

From your letter and these papers enclosed we ascertain the following facts:

Dade County is in process of refunding part of its Road and Bridge bonds with maturities from 1933 to 1937 being included in the refunding operations. These aggregate \$465,000. The records of the Board of County Commissioners as certified to by the Clerk show that \$351,000 have actually been exchanged for refunding bonds, leaving outstanding the following:

\$62,000 in bonds now held in sinking funds administered by the Board of County Commissioners of Dade County;

\$18,000 of bonds held by the State Board of Administration in sinking funds administered by it;

\$34,000 of bonds in the hands of the public.

The Board expresses its opinion that it will be impossible to effect the exchange of the \$34,000 in bonds held by the public.

The resolution requests the State Board of Administration to pay and cancel the \$62,000 in bonds held by the County in sinking funds administered by it. Simultaneously therewith the Board of County

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Commissioners will pay \$50,000 in past due Court House and Jail bonds held by the State Board of Administration.

The resolution further requests the Board of Administration to cancel and surrender the \$18,000 in bonds held in sinking funds administered by it.

The resolution further requests the Board of Administration to make provision for payment and cancellation of the \$34,000 in bonds in the hands of the public as the same severally mature.

All matured interest coupons attached to the bonds involved are to be paid in connection with the payment of the bond itself.

You further advise that there are ample funds to effect the transaction.

It is my opinion that the Board of Administration is authorized to pay the bonds owned by the County and those owned by the public as the same mature, together with the matured interest coupons attached thereto.

With reference to the cancellation and surrender of the \$18,000 in bonds in sinking funds administered by the Board of Administration, I find that there is one of such bonds of the October 1, 1926 issue of General Highway bonds due in 1937, which is in the sinking fund of Special Road and Bridge District No. 2. As to this bond the Board of Administration is not authorized to cancel the same.

As to the remaining seventeen bonds, while \$6,000 of the October 1, 1926 General Highway bonds were originally purchased by the Bond Trustees prior to the beginning of operations by the Board of Administration for the sinking fund of the Highway and Funding bonds of 1913 and 1914, I find that since the Board of Administration has been in operation, all the countywide bond funds are carried in a single consolidated account for the benefit of all issues; and that should the \$6,000 in bonds be paid, such funds would be placed in the general account for the benefit of all issues. I am, therefore, of the opinion that all of the remaining seventeen bonds may be cancelled and surrendered.

October 15, 1935.

**BOARD OF ADMINISTRATION—ST. JOHNS COUNTY—AUTHORITY
TO EXCHANGE BONDS IN SINKING FUNDS**

Dear Sir:

This is in response to your inquiry of October 3, 1935.

The facts concerning, which your inquiry is made are as follows: There is an issue under date of January 1, 1926, of St. Johns County

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Road bonds, and in the sinking fund for the retirement thereof are \$17,000 in bonds of that issue which will mature in 1946. In the sinking fund of the Brick Road bond issue are \$32,000 in bonds of the said January 1, 1926 issue, which also mature in 1946.

The holder of a block of 1936 maturities of the January 1, 1926 issue has requested the Board of County Commissioners to authorize the exchange of the 1936 maturities for the 1946 maturities held in the sinking funds as aforesaid. The County Commissioners have signified their acceptance thereof by a resolution, certified copy of which has been furnished to the Board of Administration.

You ask whether or not the law is such as to specifically prohibit the Board of Administration from making the exchange of securities as indicated.

As to the exchange of securities in the sinking fund of the January 1, 1926 issue, pursuant to my prior opinion under date of September 11, 1934, there is no objection to such an exchange upon the basis of par, together with all unmatured interest coupons as of the date of exchange.

As to the exchange which involves the sinking fund of the Brick Road issue, I regret to advise that while there is no specific prohibition in the statutes governing the Board of Administration which precludes it from effecting the proposed exchange, inasmuch as the Board is a statutory board, its powers must be found within "the four corners" of the statute creating it and delegating to it such powers. An examination of such statutes fails to disclose any authority or power in the Board of Administration to change the form of investment represented by the securities in sinking funds being administered by it. My prior opinions on this were all referred to and cited in my opinion of August 8, 1935, at which time I called attention to the case of *State ex rel., Pinellas County versus Sholtz*, 115 Fla. 561, 155 So. 736. See also my opinion under date of September 25, 1935, with reference to a similar situation in Lake County.

October 10, 1935.

**BOARD OF ADMINISTRATION—ST. JOHNS COUNTY—RETURN OF
GASOLINE MONEY UNDER CHAPTER 17035, ACTS OF 1935**

Dear Sir:

This acknowledges your communication of October 3, 1935, enclosing copy of resolution adopted by the Board of County Commissioners of St. Johns County, requesting the Board of Administration to pay to said Board of County Commissioners one-half of the gasoline money placed to the credit of said County during the month of October 1935 pursuant to the terms of Chapter 17035.

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You ask for my opinion as to whether or not the Board of Administration is authorized to comply with the request of the County Commissioners.

An examination of the said Chapter 17035 discloses that upon request of the Board of County Commissioners, the Board of Administration is authorized and directed to pay to such Board not more than one-half of the gasoline tax moneys credited to such county, and such money may be used by the Board of County Commissioners for any county purpose. The Act further provides for the resolution determining the amount not to exceed one-half of such moneys, which is to be returned to the county.

It is my opinion, as heretofore advised in respect to similar matters, that the said Act of 1935 is probably unconstitutional and would be so held in the event the matter were presented to the courts. However, the Board of Administration is protected in complying therewith until such invalidity is determined by a court of competent jurisdiction.

October 10, 1935.

**BOARD OF ADMINISTRATION—OKALOOSA COUNTY—RETURN OF
GASOLINE MONEY UNDER CHAPTER 17036, ACTS OF 1935**

Dear Sir:

This acknowledges your communication of October 3, 1935, enclosing copy of resolution adopted by the Board of County Commissioners of Okaloosa County, requesting the Board of Administration to pay to said Board of County Commissioners one-half of the gasoline money placed to the credit of said County during the month of October 1935 pursuant to the terms of Chapter 17036.

You ask for my opinion as to whether or not the Board of Administration is authorized to comply with the request of the County Commissioners.

An examination of the said Chapter 17036 discloses that upon request of the Board of County Commissioners, the Board of Administration is authorized and directed to pay to such Board not more than one-half of the gasoline tax moneys credited to such county, and such money may be used by the Board of County Commissioners for any county purpose. The Act further provides for the resolution determining the amount not to exceed one-half of such moneys, which is to be returned to the county.

It is my opinion, as heretofore advised in respect to similar matters, that the said Act of 1935 is probably unconstitutional and would be so held in the event the matter were presented to the courts. However, the Board of Administration is protected in complying therewith until such invalidity is determined by a court of competent jurisdiction.

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September 25, 1935.

BOARD OF ADMINISTRATION—LAKE COUNTY—AUTHORITY TO
EXCHANGE BONDS IN SINKING FUND OF SR&BD NO. 1

Dear Sir:

This is in response to your communication of September 24, 1935, which has reference to my opinion under date of August 8, 1935, concerning a proposed exchange of \$10,000.00 in Lake County Special Road and Bridge District No. 1 bonds for \$10,000.00 Lake County Clermont-Minneola Special Tax School District No. 31 bonds, which latter are now held in the sinking fund of the said Special Road and Bridge District No. 1.

Under date of August 8th I ruled that the Board of Administration was without authority to change the form of investment by making the contemplated exchange.

You now ask the following question:

"Is the law such that the State Board of Administration would be *specifically prohibited* from exchanging the school district bonds for the road district bonds, if the Board of Administration considers it to the best interest of the sinking fund of the road district to do so and the county commissioners furnish certified copy of a resolution approving the exchange?"

There is no specific prohibition in the statutes governing the Board of Administration which precludes it from effecting the proposed exchange. However, inasmuch as the Board of Administration is a statutory board, its powers must be found within "the four corners" of the statute creating it and delegating to it such powers. An examination of such statutes fails to disclose any authority or power in the Board of Administration to change the form of investment represented by the securities in sinking funds being administered by it. My prior opinions on this were all referred to and cited in my said opinion of August 8th, and I also called attention to the case of State ex rel., Pinellas County versus Sholtz, 115 Fla. 561, 155 So. 736.

September 25, 1935.

BOARD OF ADMINISTRATION—BROWARD COUNTY—MANDAMUS
PROCEEDINGS STATE EX REL., RITTENOURS VERSUS
JUVENAL, ET AL—15TH JUDICIAL CIRCUIT—NO. 2954

Dear Sir:

This acknowledges yours of September 23rd, wherein you enclose certified copy of alternative writ of mandamus issued October 20, 1934,

KANNER BILL (Chapter 15891 of 1933)

in the above cause. Pursuant to this writ the county officials made a special tax levy for the purpose of paying the items mentioned in the writ. Proceeds from the tax levied were remitted to the Board of Administration and by it paid out and the items specified in the original writ have been paid, the same having been so paid on a compromise basis of 45% of par.

You also enclose certified copy of an amendment to the alternative writ of mandamus pursuant to stipulation between the parties, such amendment being made for the purpose of including additional items in the alternative writ of mandamus to be paid out of the balance of funds resulting from such tax levy after the items included in the original writ were paid.

You ask whether or not the Board is authorized to comply with such amended writ and pay the coupons described therein.

It is my opinion that you may proceed to fulfill the command in the said alternative writ by payment of the items included therein by amendment. I understand from your communication that the county officials performed the alternative writ and thereby obviated the necessity of a peremptory writ being issued.

August 30th, 1935.

**BOARD OF ADMINISTRATION—MANTEE COUNTY—SENATE BILL
NO. 1014, ACTS OF 1935, CHAPTER 16805 OF 1935**

Dear Sir:

This is in response to your communication of August 27, 1935, wherein you advise that Manatee County is making provision to refund a certain bond issue in the sum of \$23,000.00 on a basis of 30% payment in cash, 63% in refunding bonds; of the \$23,000.00 in bonds, \$11,000.00 have been fully paid and cancelled; of the \$12,000.00 remaining, six bonds have already been exchange, leaving six yet to be exchanged. Of the six still to be exchange, five are held in the investment account of the 1909 road bond issue of Manatee County, the remaining \$1000.00 bond is outstanding and its ownership unknown.

You enclose certified copy of resolution of the Board of County Commissioners of Manatee County requesting the Board of Administration to exchange the five bonds so held in the 1909 road bond issue for refunding bonds on the above 35-65% basis. The resolution is pursuant to the terms of Senate Bill 1014, Acts of 1935. You also advise that there is sufficient cash to complete the transaction and still reserve \$350.00 for the one bond, the ownership of which is unknown, and exchange two of the bonds held in the sinking fund, the other three bonds to be taken care of out of receipts during the next three months.

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It is my opinion that the Board of Administration is authorized to carry out the terms of this resolution, inasmuch as all bondholders of the particular maturity will be treated on a parity and the terms of the said Senate Bill No. 1014 specifically authorize the acceptance of refunding bonds and the making of such concessions or compromises or other terms or provisions as in the best judgment and sound discretion of the Board of Administration shall appear to be for the best interest of the fund or funds to the credit of which the obligations to be refunded are held.

August 22, 1935.

**BOARD OF ADMINISTRATION—OKEECHOBEE COUNTY—AUTHORITY TO DIVERT FUNDS IN ACCORDANCE WITH RESOLUTION
—SENATE BILL NO. 769, ACTS OF 1935, CHAPTER 17057**

Dear Sir:

This acknowledges receipt of your communication of the 21st, in which you enclose certified copy of resolution of the Board of County Commissioners of Okeechobee County.

The facts disclosed are as follows:

There was a certain issue of St. Lucie County bonds outstanding at the time Okeechobee County was created out of the territory of St. Lucie County, and upon creation Okeechobee County assumed its share of such indebtedness. Upon such bond issue there was a principal maturity of \$40,000.00 due June 1, 1930. By February 25, 1931, there were sufficient funds on hand to pay approximately 75 per cent of said maturity and the same was paid with the bonds involved being taken on deposit by your under a trust receipt calling for the subsequent payments necessary to pay said bonds in full to be made as funds accrue.

One of these trust receipts, to-wit: No. 3, represents a deposit of \$17,000.00 worth of bonds, with the balance of \$4250.00 still due to be paid thereon.

The counties which had assumed this indebtedness had, at the time of making such partial payment, paid their proper shares with the exception of Okeechobee County, its share being \$10,000.00

The resolution recites that a portion of this trust receipt to the extent of \$456.39 was assigned to the taxing authorities of Okeechobee County in payment of certain taxes, and cancelled pursuant to the provisions of certain Acts of 1935, and that there is, therefore, a net balance of \$3,791.61 yet to be paid on such trust receipt. This balance has now been offered to the county at fifty cents on the dollar.

There is to the credit of Okeechobee County, for the account of the said St. Lucie County indebtedness as assumed, \$942.30 in ad

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valorem tax moneys and \$492.79 in gasoline tax moneys, or a total of \$1,435.18.

The resolution requesting the Board of Administration to apply the said \$1,435.18 to the purchase at fifty cents on the dollar of the balance due on said trust receipt, the balance of such purchase price to be paid as funds accrue. The resolution also recites that under Senate Bill No. 769, Acts of 1935, the gasoline tax moneys revert to the Board of County Commissioners of Okeechobee County.

An examination of said Senate Bill No. 769 reveals that it is a population measure embracing only Okeechobee County, and provides that gasoline moneys which accrue to the credit of any county for the purpose of retiring, by purchase or otherwise, road and/or bridge bonds of any other county or counties, which may have been assumed by the county to which the moneys are credited, the State Board is authorized and directed to distribute immediately all such moneys to the general fund of the county to which credited.

I express my opinion, of course, as to the constitutionality of the said Senate Bill No. 769, but it is my opinion that even under said Bill the Board of Administration is without authority to comply with the resolution of the Board of County Commissioners. The Bill, in the first place, only applies to gasoline moneys and requires that the same should revert to the general fund of the county; in the second place, the procedure outlined in the resolution would constitute a preferential payment to the prejudice of the holders of other bonds entitled to share in the funds involved.

July 18, 1935.

**BOARD OF ADMINISTRATION—FLAGLER COUNTY—HOUSE BILL
NO. 1383, ACTS OF 1935, Chapter 16809**

Dear Sir:

This is in response to your communication of July 16th, wherein you ask whether or not the Board of Administration is authorized to comply with the provisions of House Bill No. 1383, Acts of 1935.

While this Act might probably be held unconstitutional, it is my opinion that the Board of Administration is authorized to comply therewith until such unconstitutionality may be declared by a court of competent jurisdiction.

KANNER BILL (Chapter 15891 of 1933)

September 8, 1936.

**BOARD OF ADMINISTRATION—GLADES COUNTY—F. S. OLIVER
VS. GLADES COUNTY***Dear Sir:*

This refers to your communication concerning the above matter. With your letter you enclosed copy of resolution adopted by the Board of County Commissioners of Glades County on August 3, 1936, requesting the Board of Administration to pay from ad valorem funds hereafter accumulating to the credit of Moore Haven Special Road and Bridge District No. 18, a judgment held by one F. S. Oliver. You ask to be advised whether the Board of Administration may legally comply with the request of the County Commissioners.

I am of the view that, since these funds were not earmarked when raised, and since they are not the proceeds of a special levy made for the purpose, then the question becomes one as to whether or not the Board of Administration may pay out funds in its hands, not being required by mandamus to do so, where the total fund on hand is insufficient presently to pay all equally entitled to payment out of the same. I have consistently taken the position that such payment, without an earmarking good even as between the parties, would constitute a preference; and that the Board of Administration is, therefore, without authority to comply with such request. Of course, if a writ of mandamus is served, impounding certain moneys on hand, then the first come, first served rule becomes applicable, but I am of the view that that rule does not apply until such writ is served.

Trusting that this is the advice you desire, and returning herewith the papers submitted to us by you, I am

August 29, 1936.

**BOARD OF ADMINISTRATION—BREVARD COUNTY—SALE OF
SECURITIES HELD IN INTEREST AND SINKING FUND***Dear Sir:*

This refers to your letter of August 28th, 1936, in which you advise that the Board of County Commissioners of Brevard County is willing that the Board of Administration exchange the Town of Palm Bay bonds, referred to in our previous correspondence, for a like amount of par value of City of Eau Gallie bonds. I should like to do whatever I can, under the law, subject to the approval of the Board of Administration, to carry out the wishes of the County in the matter; but I cannot, consistently with opinions which I have previously rendered, approve such an exchange, because I have consistently ruled, and am still of

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the opinion that, there is no authority under the law whereby the Board of Administration may legally exchange bonds held in an interest and sinking fund investment account, for other securities.

It is regrettable that the Legislature has not made provision in the law for such matters, but until it does, I do not feel that I can consistently approve such action.

August 26, 1936.

**BOARD OF ADMINISTRATION—APPLICATION OF PROCEEDS OF
ALLEGED SPECIAL LEVIES**

Dear Sir:

This refers to your letter of August 20, 1936.

As I have previously advised the State Treasurer, the Supreme Court of Florida, in the case of State ex rel. Lawler against City of West Palm Beach, decided July 15, 1936, held that where a special tax levy is made by a default public debtor, pursuant to peremptory writ of mandamus, the fund produced is impressed with a lien and is consequently immune from successful attack by a subsequently litigating creditor of the same general class, seeking to enforce the "first come, first served" rule; but that where such levy is made voluntarily (in the sense that it is not required by mandamus), the fund produced may, prior to disbursement, be sequestered in mandamus proceedings by litigating creditors of the same class. The Court did not pass upon the immunity *vel non* from such attack of funds produced by a so-called special levy made pursuant to alternative writ of mandamus, nor do I express any opinion regarding such situation.

When, therefore, the showing made by the records of the Board of Administration is such that it appears therefrom that there is in hand a fund earmarked for a particular purpose, in accordance with a levy, whether such levy be voluntary or not, such fund may be disbursed in accordance with the disclosed purpose, so long as at the time of such disbursement, no writs of mandamus have been served upon the Board of Administration, seeking to impound the portion of the fund contemplated to be disbursed. This is so with reference to voluntary levies in the sense referred to above, because of the theory inherent in the decision of the Lawler case, which found expression in the dictum that the voluntary earmarking "may be altogether good" as between the parties to the transaction and, as such, become binding upon the public debtor in such manner as to prevent the voluntary diversion of such fund to other purposes without the consent of the beneficiary of such levy.

But you will note that the Lawler case assumes the existence of the earmarked fund. Necessarily, therefore, the records of the Board of

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Administration, before it should be called upon to make disbursements, should be such as to show the method of the earmarking and that the fund on hand is, in fact, the result of the special levy. In cases where such levy is made pursuant to peremptory writ of mandamus, it would seem to be obvious that the Board should have a properly certified copy of the writ, pursuant to which the levy was made, together with a duly authenticated copy of that portion of the budget or budgets setting up such levy. Otherwise, it would be difficult to determine with any degree of certainty, whether the method of earmarking employed in the budget, corresponded with that commanded by the writ. Likewise, in cases where the levy is made pursuant to alternative writ, or to stipulation entered into after the service of alternative writ, the records of said Board should be such as that reference to them should disclose the true situation. Moreover, if the levy is an entirely voluntary one, made without being required by writ at all, the records of the Board should show the full method of earmarking—not simply that a certain tax levy has been "earmarked" for a particular person, without a showing as to the securities intended to be paid therefrom.

If, furthermore, remittances made by a Tax Collector are such as to leave it in doubt, from his certificate, as to the levy pursuant to which the remittance was made, the Board can hardly have any alternative but to correct and clarify its records before disbursing the funds so remitted. All of these things, I think you will agree, enter into and form a part of the initial and important question of fact to be determined before the law applicable to special, or so-called special, earmarked levies, can apply; that is to say, whether there is in fact on hand a fund raised pursuant to special appropriation and earmarked for the purposes for which the payment is demanded.

I entertain no doubt but that the discretion of the Board of Administration is sufficiently broad to enable it to require its records to be clear enough that it may determine therefrom the character of the fund on hand, the manner in which it was raised, and the purpose for which earmarked. Certainly it would be unreasonable to suppose that in such matters the Board should be expected to act without knowing what it was doing, or upon hearsay evidence or conjecture as to the character of the fund, or the character of the earmarking employed.

Nor do I understand that the Lawler case requires such action. Indeed, the fact that the dictum therein regarding voluntary special levies, indicates that funds raised pursuant thereto, may not voluntarily be diverted to other purposes by the public debtor, does not necessarily mean that there is any mandatory duty to take positive action to disburse these funds, without record facts upon which permissive action may properly be based.

I believe that the foregoing, taken in connection with copies of my opinions rendered under date of July 23rd and July 24th respectively, in re: Board of Administration—Hernando County—Application of pro-

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ceeds of alleged special levies; and in re: Board of Administration—Sarasota County—Application of proceeds of alleged special levies, which copies are enclosed herewith for your information, will serve to clarify somewhat in your mind our position with regard to these so-called special levies.

I do not know why it is that the State Treasurer, as County Treasurer Ex Officio, has, as referred to in your letter, refused to make payments under the earmarked levy in Sarasota County, although I assume that it must be because his records are not, at the present stage, so clear as that he can satisfy himself therefrom, of the character of the fund from which payment is sought.

July 30, 1936.

BOARD OF ADMINISTRATION—OKEECHOBEE COUNTY—APPLICATION OF PROCEEDS OF ALLEGED SPECIAL LEVY

Dear Sir:

This refers to your communication of July 25, 1936, with which you enclosed your files in connection with judgments obtained in the United States District Court for the Southern District of Florida, in the matter of Guaranty State Bank vs. Okeechobee County, as well as in the matter of H. L. McDonald vs. Okeechobee County.

Your file reflects that special tax levies, or so-called special tax levies, were made by the Board of County Commissioners of the county in question, for the fiscal years 1934-1935 and 1935-36, for the purpose of raising funds with which to pay said judgments. You requested that I review your files, and advise you if you would be protected in paying out funds derived from said levies, in partial satisfaction of said judgments, upon properly executed partial satisfactions submitted from time to time by plaintiffs or their attorneys of record. You further state that the remittances which have been received from the Tax Collector and Clerk bear the notations that they are for: "Guaranty State Bank Fund" and "H. L. McDonald (or McDonald) judgment account".

An examination of the file in question discloses, with reference to the judgment of the Guaranty State Bank, that peremptory writ of mandamus was issued, requiring special tax levies for the fiscal years 1933-1934 and 1934-1935. Such peremptory writ, however, does not command a special levy of taxes for the fiscal year 1935-1936. Of course, any collections made from taxes levied for the purpose, in the fiscal years 1933-1934 and 1934-1935, would be impressed with the lien created by the mandamus proceedings, which lien would probably be good even as against subsequently litigating creditors. However, I am unable to say that collections from the tax levy for the fiscal year 1935-1936 would be similarly impressed with such a lien, good as against subse-

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quently litigating creditors. However, I am of the view that, so long as there are not on file against you, any mandamus proceedings, seeking to impound the proceeds of such levies above referred to, you would be protected in making payment thereof to the extent of the judgments recovered, to the relator, Guaranty State Bank, or its attorney of record. You should, however, have both the budgets and the remittances clarified on your records, by proper resolutions and certificates, to show the judgments, for the payment of which such taxes were levied, and the precise purposes for which the remittances were made.

Referring to the McDonald account, I do not find, from an examination of your file, that any peremptory writ of mandamus was issued, commanding levy for the purpose of making payment of the judgment recovered in this matter. It, therefore, follows that the special levy in question, for the payment of this judgment, would not create, in such a situation, a lien on the proceeds of this levy, which would be good as against subsequently litigating creditors. However, you would be similarly protected in making payment thereof out of the proceeds of such levy, so long as no writs of mandamus have been served on you, seeking to impound such proceeds. You should, in similar manner, obtain proper resolutions and certificates to clarify the budget or budgets under which these levies were made, and the Tax Collector's remittances.

July 30, 1936.

BOARD OF ADMINISTRATION—PALM BEACH COUNTY—INVESTMENTS HELD IN INTEREST AND SINKING FUND

Dear Sir:

In your letter of July 14, 1936, you state that in 1930 the Board or Bond Trustees of the above county turned over to the Board of Administration, pursuant to Chapter 14486, Laws of Florida, Acts of 1929, certain securities aggregating \$26,000.00 par value, which are partly held in the Interest and Sinking Fund account of Bond Fund No. 2, and partly in the Interest and Sinking Fund Account of Special Road and Bridge District No. 3. Your letter reflects that certain other securities were also similarly turned over.

You state that after the turnover in question by said Bond Trustees, the Mortgage Investment Company, a private corporation, being insolvent, was placed in the hands of a trustee. All of the securities in question are obligations of said Mortgage Investment Company. You further state that a dividend of three per cent has been declared, on the securities first above referred to; and a four per cent dividend has been declared on the other securities. You further state it to be your understanding that, should payment be accepted of the dividends as

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declared, endorsement of such payment will be shown on the securities in question, which will immediately be returned to you.

You request that I advise whether the Board of Administration may legally accept such dividends.

It appears that the securities in question are obligations of a private corporation, which is insolvent and in the hands of a trustee. In such a situation, I am of the view that the Board of Administration has authority to accept such dividends in the manner outlined. These securities came to the Board of Administration in an Interest and Sinking Fund account. Said Board is a statutory trustee, and where a private corporation is insolvent, the same presumptions as to solvency, which might be indulged with reference to obligations of public debtors, cannot be indulged with reference to similar obligations of private debtors so in the hands of a trustee. It appears to me that it accords with the intent and spirit of the Board of Administration Act, that when such Board finds itself in a situation where bonds of a private debtor come to it as part of an interest and sinking fund account; and where such private debtor is insolvent and in the hands of a trustee, the Board of Administration should, in carrying out its duties as such statutory trustee, and with the approval of the officials of the county involved, realize whatever dividends can be realized upon an original investment, which circumstances show, was improvident.

July 24, 1936.

BOARD OF ADMINISTRATION—SARASOTA COUNTY—APPLICATION OF PROCEEDS OF ALLEGED SPECIAL LEGISLATION

Dear Sir:

This refers to your letter of July 16, 1936, with which you enclosed to me your file containing certified copy of budget adopted by Sarasota County for the fiscal year 1935-1936, from which certified copy it appears that, pursuant to command of an alternative writ of mandamus, copy of which writ was also enclosed, a levy was made of twenty-two mills to pay certain interest coupons specifically described in said writ and also in said budget.

You ask whether from a consideration of your file you are protected in paying said coupons from the money derived from the special levy referred to. I respectfully refer you to my opinion under date of July 23rd, with reference to the Board of Administration—Hernando County—Application of Proceeds of Alleged Special Levies, and in particular to paragraphs 3, 4, and 6 thereof. These paragraphs contain a general statement of the law applicable to such a situation.

However, I note that the remittances from the Tax Collector bear the notation that they are for "1935 General Highway and Bridge

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Bonds, 22 Mills". In line with my opinion under date of July 23 above referred to, there seems to be no question of the endeavor on the part of the County Commissioners to earmark the proceeds of the 22 mill special levy for the payment of certain designated securities. It does not appear whether this levy was made pursuant to a peremptory writ of mandamus. You should be provided with certified copies of all writs of mandamus and final judgments involved.

Referring specifically to the question of the notation for which the remittances were made, you should satisfy yourself that such remittances are in fact the proceeds of the 22 mill special levy. In order to do this, it may be necessary that you require of the Tax Collector a corrected certificate to that effect.

July 24, 1936.

BOARD OF ADMINISTRATION—BREVARD COUNTY—APPLICATION OF PROCEEDS OF ALLEGED SPECIAL LEVY

This refers to your letter of July 17, 1936, with which you enclosed certified copy of budget adopted by Brevard County for the fiscal year 1935-1936, so far as same pertains to special road and bridge district No. 3 of said County. Your letter states that said budget reflects that a levy of two mills was made for the payment of certain bonds and interest on the same held by Havana State Bank, and that the pencilled endorsement thereon was on the sheet when received in your office from the Clerk of the Circuit Court. You ask whether you are protected in paying funds received under the 1935-1936 levy for bonds which are listed in the 1934-1935 budget of said county, pertaining to the same district.

With reference to the general law applicable to special levies, I respectfully refer you to my opinion under date of July 23, 1936, concerning Board of Administration—Hernando County—Application of Proceeds of alleged Special Levies, and in particular to paragraphs 3, 4, and 6 thereof. However, before that statement of general law can become applicable, it must always first be determined whether or not there is such a factual basis as that it can be said that there has been an effectual attempt to earmark the proceeds of a levy for special purposes. The budget transmitted me by you is in my opinion woefully deficient in this respect.

Reference to your file does not show that any levy of taxes was earmarked for the payment of any particular securities. Furthermore, it shows apparently that the interest and sinking fund expenses for said special road and bridge district were grouped with a levy for "Requirements under Mandamus for Havana State Bank", and a levy made for both requirements. If there is in fact a writ of mandamus or writs of mandamus involved requiring a special levy, you should be provided

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with certified copies of all such writs and final judgments. Moreover, you should be provided, before disbursing any of such moneys, with a certified copy of the budget which will show that funds were in fact earmarked for the purpose of paying the Havana State Bank, and which will show for what securities such funds were earmarked.

With your files in their present state, I am unable to say that you would be protected in making payment to the Havana State Bank of any proceeds of such taxes, without being required so to do by a court of competent jurisdiction.

July 23, 1936.

BOARD OF ADMINISTRATION—HERNANDO COUNTY—APPLICATION OF PROCEEDS OF ALLEGED SPECIAL LEVIES

Dear Sir:

This is in response to your letter of July 15, 1936, with which you enclosed certified copy of a portion of Hernando County's budget for the fiscal year 1935-1936. The papers submitted show that the Board of County Commissioners of said county thereby levied a tax of 27 mills on the dollar, to pay particularly described interest coupons of issues of Hernando County Road and Bridge bonds, 30 per cent to be used to pay one group, and 70 per cent to pay another.

You ask whether you will be protected in paying out of the proceeds of such levy such coupons as may be presented, when they are properly described in the portion of the budget referred to. I assume, of course, that you do not intend to use proceeds allocated to the 70 per cent group, for payment of coupons in the 30 per cent group, or vice versa.

Your question in reality is a double one. It involves a question of law, as to the validity of special, or so-called special, earmarked appropriations or levies made for the benefit of designated bondholders, to the exclusion of others equally entitled. It involves also a question of fact, as to when, and for what purposes, such a levy is in fact earmarked.

First, as to the question of law. Our Supreme Court, in the as yet unreported case of *State ex rel. Lawler against City of West Palm Beach*, in which the opinion of the court was filed July 15, 1936, held two things: that where a special tax levy is made by a defaulting public debtor, pursuant to peremptory writ of mandamus, the resultant fund is impressed with a lien, and is consequently immune from attack by a litigating creditor seeking to enforce the "first come, first served" rule; and that where such levy is made voluntarily (in the sense that it is not required by mandamus), the resultant fund is not, as against litigat-

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ing creditors, impressed with a lien, and consequently may, by such litigating creditors of the same general class, be sequestered by mandamus under the "first come, first served" rule. The court said that this was so, although the earmarking "may be altogether good" as between the parties to the transaction, and as such, become binding upon the public debtor in such manner as to prevent the diversion voluntarily of such fund to other purposes, without the consent of the particular beneficiary of the levy.

Second, as to the question of fact. There is no question of the endeavor, on the part of the County Commissioners, to earmark the proceeds of a 27 mill levy for the payment of certain designated coupons, such proceeds to be allocated to the two groups above mentioned. There is a possible question as to whether this was done pursuant to peremptory writ of peremptory writs of mandamus, as the budget does not show the court or the number of the case, in which such writ or writs may have issued, or that the method of earmarking corresponds with that required by said writs. In any event, the allegation in the budget should be clarified by proper amendment, to make it speak the full truth; and you should be provided with certified copies of all writs of mandamus and final judgments involved. In addition, you state that the remittances received by you came from the Tax Collector, with the notation that they were for "countywide bonds and time warrants." Since I have before me only a portion of the budget, I am unable to say whether there may not also have been another levy of general character, made for such purpose. It follows that you should satisfy yourself, by corrected certificate of the Tax Collector, if necessary, that the remittances made are the result of the earmarked 27 mill levy.

Assuming, therefore, that the funds on hand are, in fact, the proceeds of such levy, I am of opinion that you would be protected in disbursing them in accordance with the disclosed earmarked purposes, whether raised pursuant to peremptory writ or not, so long as at the time of such contemplated disbursement, no writ of mandamus has been served upon you, seeking to impound the portion desired to be disbursed. If, in fact, the funds were raised pursuant to peremptory writ, you would probably be protected in disbursing them similarly, in spite of attempts on the part of litigating creditors to impound them; but, as to this, I suggest that they should not be disbursed as against the claims of such litigating creditors, until a court of competent jurisdiction shall have denied such claims.

July 30, 1936.

**BOARD OF ADMINISTRATION—ST. LUCIE COUNTY—APPLICATION
OF PROCEEDS OF ALLEGED SPECIAL LEVIES**

Dear Sir:

This refers to your communication of July 29, 1936, relative to

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the above matter. With your letter you enclosed copies of the following writs:

1. Alternative writ out of St. Lucie Circuit Court, in the case of State ex rel. Women's Benefit Association vs. St. Lucie County.

2. Alternative writ out of the same court, in the case of State ex rel. S. L. Williams vs. Board of County Commissioners of St. Lucie County.

3. Peremptory writ of mandamus, in the case last above.

4. Alternative writ out of same court, in the case of State ex rel. Alton M. Ake vs. Board of County Commissioners St. Lucie County, et al.

5. Peremptory writ out of the same court, in the case of State ex rel. Houston vs. Board of County Commissioners, et al.

6. Peremptory writ out of the same court, in the case of State ex rel. Fee & Liddon Co. vs. Board of County Commissioners St. Lucie County, et al.

You also enclosed your entire file concerning the budget adopted by St. Lucie County, for the fiscal year 1935-1936, including various alleged special levies therein set up.

You wish to be advised if you will be protected in paying out funds remitted and earmarked for the special purposes set forth in said budget. Particularly with reference to the case of S. L. Williams, above referred to, I have examined the file in question, and am of the view that you will be protected in making payment in each of the above instances, so long as no writs of mandamus have been served upon you, seeking to impound the proceeds of the so-called special levies referred to. However, your files should be clarified, if possible, in various respects. For instance, if peremptory writ of mandamus has been issued, in the case first above referred to, you should be provided with an attested copy thereof, together with attested copy of the final judgment upon which the same was issued. Moreover, in each instance, you should be provided similarly with attested copies of alternative writs of mandamus, of final judgments, and of peremptory writs of mandamus, in order that you may determine whether the method of earmarking set forth in the budget corresponds with that set forth in the writs.

The only clarification which seems to be necessary with reference to the Tax Collector's remittance, is that you should be provided with proper certificate or affidavit of the Tax Collector, which will sufficiently describe the claims for which these remittances were made, in such manner as indubitably to identify the account with the writ of mandamus in question, and with the levy as made in the budget.

In general, in connection with these matters, your files should show:

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(a) Attested copies of all alternative writs, final judgments, and peremptory writs requiring levies to be made.

(b) Attested copies of all budgets, setting up special levies, sufficiently clear to identify the special levy as having been made pursuant to the writ in question.

(c) Proper certificates, where necessary, to show that the remittances made by the Tax Collector, were made under and pursuant to the special levy set up by the County Commissioners, in the budget.

July 24, 1936.

**BOARD OF ADMINISTRATION—BROWARD COUNTY—APPLICATION
OF PROCEEDS OF ALLEGED SPECIAL LEVY**

Dear Sir:

This is in answer to your letter of July 20, 1936.

For matters of general law relative to the application of proceeds of alleged special levies, I respectfully refer you to paragraphs 3, 4, and 6 of my opinion under date of July 23, 1936, Re: Board of Administration—Hernando County—Application of Proceeds of Alleged Special Levies.

With your letter you handed me your file in connection with the budget and tax levy for the fiscal year 1935-1936 for Broward County Road and Bridge Bond issues. From the copy of the budget in question, it appears that a levy of 8/10 of a mill was apparently made for "Highway 'A' Fund (C. J. Root)", and a levy of 1.4 mills for "Highway 'B' Fund (Palm Beach Company)". You state that these levies appear to have been made voluntarily, and that you have no record of any mandamus suit brought to compel the Board of County Commissioners of said county to make the same.

With your letter you also enclosed copy of letter signed by the Board of County Commissioners of Broward County by E. R. Bennett, Clerk, which purports to list the particular coupons which should be paid out of the proceeds of the respective levies. You request my advice as to whether you are authorized to pay the coupons described in the letter out of the funds levied for "Highway 'B' Account" above referred to.

I beg to advise that with your files in their present state, you have no authority to make such payment. Before you can be authorized to make such payment under the conditions of the general law referred to in my opinion of July 23, 1936, you should first secure a proper amendment to the budget in question to make it speak the full truth, showing what securities were intended to be paid out of the proceeds of such levy for said "Highway 'B' Fund".

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I do not think that you would be authorized to act upon a letter from the Board of County Commissioners signed by its Clerk. Such action on your part should be predicated only upon certified copy of proper resolution.

July 9, 1936.

**BOARD OF ADMINISTRATION—ORANGE COUNTY—PAYMENT OF
NECESSARY EXPENSES IN CONNECTION WITH
REFUNDING PROGRAM**

Dear Sir:

This refers to your letter of July 1, 1936. With that letter you enclosed copy of resolution adopted by the Board of County Commissioners of Orange County, on June 27, 1936, which authorized and directed the Board of Administration to pay to Messrs Tilden & Hayes, attorneys at law, of Orlando, Florida, \$3,000.00, to cover a bill, a copy of which was also enclosed by you. This bill is apparently for legal services rendered by said firm, in connection with the validation and exchange of \$941,000.00 of Orange County Road bonds.

The resolution directs that the expenses be paid from the second and third road bond issues and the interest and sinking accounts thereof, in proportion to the bonds refunded for each of the respective issues. Your letter states that the Board of Administration, on July 1, 1936, approved the payment of the bill, subject to my written opinion as to the authority of the Board of Administration to make such payment from surpluses in the accounts above referred to. This will advise that I am of opinion that the Board of Administration has authority to comply with the terms of said resolution, it appearing, from the resolution of said Board, that the Board of County Commissioners has found and determined that the said fee is reasonable and just.

May 5, 1936.

**BOARD OF ADMINISTRATION—CHARLOTTE COUNTY—RETURN
OF GASOLINE TAX MONEYS UNDER CHAPTER 17046, ACTS OF 1935**

Dear Sir:

I have before me your letter of April 27, 1936, in which you direct attention to the fact that Chapter 17046, Laws of Florida, Acts of 1935, applies to Charlotte County, Florida, and purports to authorize, empower and direct the Board of Administration to pay monthly, to the "County road and bridge fund", one-third of all gasoline tax funds, to be used by the county commissioners of said county, for road purposes, conditional upon the ratification of said act, by a majority of

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qualified electors. You further direct attention to the fact that an election was held, and the act ratified, on September 3, 1936.

You further state that on December 18, 1935, the attorney for Charlotte County appeared before the Board of Administration, advised that certain Charlotte County funds were tied up in litigation; and requested that after the settlement of such litigation, the Board of Administration comply with the provisions of Chapter 17046 aforesaid. You state that the litigation in question has now been settled, and that certain gasoline tax funds were used in the settlement thereof.

You further state that at this time there are not sufficient gasoline tax funds in the countywide account of Charlotte County, to return one-third of the gasoline tax funds distributed and allocated to said account, since September 3, 1935; but that there are sufficient funds in the accounts of the special road and bridge districts of said county, to return one-third of the gasoline tax funds distributed and allocated to the latter accounts since September 3, 1935.

You request that I furnish you my written opinion as to whether or not the Board of Administration now has authority: (1) to return to the county in question, in accordance with the provisions of said chapter, one-third of the gasoline tax moneys received and allocated to the credit of said county, each month hereafter, (2) to return to the county one-third of such funds received since September 3, 1935.

I am of the opinion that the chapter above referred to, is unconstitutional, and will be so declared, whenever the matter is submitted, by proper proceedings, to a court of competent jurisdiction. However, the Board of Administration will be protected in complying with its terms and provisions, until such time as it is so declared unconstitutional.

In answer to your inquiry, therefore, I am of the opinion: (1) that there being sufficient funds in the accounts of the special road and bridge districts, to return one-third of the gasoline tax funds distributed and allocated to such district since September 3, 1935, such third may be returned, and one-third of each monthly collection hereafter may be returned, for distribution in accordance with the terms and provisions of said chapter. (2) That one-third of the gasoline tax moneys as received each month hereafter, for allocation to the countywide account, may likewise be returned. (3) That there is no authority under said act, to return to the county one-third of the total gasoline tax receipts allocated to the countywide account since September 3, 1935, if such return will involve a remittance, as to future receipts, of more than one-third of each month's receipts of gasoline tax moneys.

You will note that Section 1 of the act in question makes specific provision that the Board of Administration shall be, and it is, authorized to distribute and pay *monthly*, one-third of the moneys derived from gasoline taxes. You will further note that Section 2 provides that the

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remaining two-thirds of such taxes shall not be disturbed or in any-wise affected. If, therefore, in order to make a return of one-third of all gasoline taxes received since September 3, 1935, it would be necessary for the Board of Administration to return more than one-third of the monthly remittance hereafter accruing, I am of the opinion that it is without authority to do so.

May 5, 1936.

**BOARD OF ADMINISTRATION—ST. JOHN'S COUNTY—PAYMENT
OF INTEREST AFTER MATURITY**

Dear Sir:

I have before me your letter of May 1, 1936, together with attached file of correspondence relating to a block of \$50,000.00 of St. John's County, Florida 5% road bonds dated January 1, 1926, and due January 1, 1936. You state that certain of these bonds were presented by the Capital City Bank of Tallahassee, Florida, on February 7, 1936, and that this bank accepted, in settlement therefor, \$30,000.00 of bonds of the same issue, maturing in 1956, and \$20,000.00 in cash.

You request that I examine your correspondence file and furnish you with my opinion as to whether or not the Board of Administration is authorized to comply with the request by a Mr. _____, for payment of interest at the coupon rate, from the maturity date of the bonds so presented, to the date of the official notification of provision for settlement, this inquiry being limited to those bonds which were paid with the \$20,000.00 above referred to. I have examined the file in question, and am of opinion that the Board of Administration possesses only such authority as is expressly given it by the statute under which it exists, or as arises by necessary implication therefrom. The Supreme Court of Florida, in the case of *State ex rel Center v. Sholtz*, reported at 156 So. Rep. 746, in an original mandamus proceeding brought by the holder of matured county bonds, to compel payment thereof, held that such holder, not having reduced the bonds to judgment prior to instituting suit, could not, by mandamus, collect interest on the matured principal of such bonds. The court further pointed out that this rule was not altered by the fact that the bond contract itself specifically provided for liability for interest at the contract rate until paid, inasmuch as both the bonds and the statute in question contemplate payment thereof at maturity, as the enforceable statutory duty owed to be performed by the officers, for the benefit of the bondholders. It was there pointed out that payment of interest after maturity, is merely a contingent liability, which may become enforceable against the obligor by a reduction of the bonds to judgment.

The holders of such bonds are presumed to be cognizant of this rule of law which exists in Florida.

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Your file discloses that at the time these bonds were presented for payment and exchange, no claim or demand was made upon the Board of Administration for the payment of interest after maturity. Had such payment been demanded, I am of opinion that the Board would have been without authority to comply therewith. Since it was not demanded, and the bonds have been cancelled, there is clearly no authority now, on the part of the Board of Administration, to pay such interest.

July 3, 1936.

**BOARD OF ADMINISTRATION—SOUTH LAKE COUNTY SPECIAL
ROAD AND BRIDGE DISTRICT—LAKE COUNTY—REFUNDING
PROGRAM—TRANSFER OF KANNER BILL MONEYS TO
INTEREST AND SINKING FUND AND REMITTANCE
TO DESIGNATED PAYING AGENT**

Dear Sir:

This refers to your letter of July 1, 1936, relative to the above matter. With your letter you enclose resolution, which is substantially similar to the resolution affecting Volusia County, Orange City-Lake Helen Special Road and Bridge District, concerning which I have advised you by opinion dated July 3, 1936. The names, amounts, and other items are, of course, different, but the proposition involved is the same.

You state that the Board of Administration has agreed, subject to my opinion as to its authority to do so, to comply with the terms of the resolution enclosed with your letter, to which this is a reply. You request that I advise you as to the Board's authority in the premises. Please refer to my opinion cited above. I am of the view that, for the reasons therein stated, and subject to the conditions therein stated, the Board of Administration has authority to comply with the terms and provisions of such resolution.

July 3, 1936.

**BOARD OF ADMINISTRATION—ORANGE CITY-LAKE HELEN
SPECIAL ROAD AND BRIDGE DISTRICT—VOLUSIA COUN-
TY—REFUNDING PROGRAM—TRANSFER OF KANNER
BILL MONEYS TO INTEREST AND SINKING FUND
AND REMITTANCE TO DESIGNATED PAYING
AGENT**

Dear Sir:

This refers to your letter of July 1, 1936, with which letter you enclose copy of resolution adopted, on June 4, 1936, by the Board of

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County Commissioners of Volusia County, relative to the above referred to Special Road and Bridge District. You state that this resolution is one of several similar resolutions adopted by said Board, as to other Special Road and Bridge District Interest and Sinking Fund accounts or Countywide Interest and Sinking Fund accounts of said Volusia County, and that, except for changes of name, etc., the other resolutions are similar. For the purpose of this opinion, I assume that this is so, as I do not have such other resolutions before me.

Section 1 of the resolution directs the attention of the Board of Administration to a previous resolution by said Board, authorizing the issuance of Road and Bridge Refunding bonds of said Special Road and Bridge District. Section 2 directs the Board of Administration, in view of said Refunding, to transfer to the Interest and Sinking Fund account of said Refunding bonds, all interest and sinking fund balances to the credit of the issues of bonds refunded pursuant to the resolution mentioned in Section 1; and, after effecting such transfer, to remit to the designated paying agent sufficient money to pay interest coupon No. 1, due July 1, 1936, on said Refunding bonds, which will require the sum of approximately \$2,227.60. Section 3 of said resolution sets forth the previous adoption, by said Board, of the provisions of Chapter 15291, Laws of Florida, Acts of 1933, the desire of said Board to continue operations under said law, the determination, by said Board, that the best interests of Volusia County and its taxpayers will be served if sufficient funds are transferred from the so-called Kanner Bill account for the issues of bonds above referred to, to make such remittance and payment directed in Section 2 above, and directs the Board of Administration to make such necessary transfers, it being the desire of the Board of County Commissioners that all ad valorem taxes credited to the interest and sinking fund, be first used for the designated payments. Section 4 concerns certain directions to the Clerk of the Board of County Commissioners. Section 5 refers to interest adjustments on matured bonds. Section 6 concerns interest adjustments, and Section 7 directs the Board of Administration to set aside certain moneys in a liquidation account, for purposes in connection with such interest adjustments.

You state that the Board of Administration has approved the transfer of necessary funds from the Kanner Bill accounts to the Interest and Sinking fund accounts, and has agreed to open the liquidation account above referred to, subject to my opinion as to the authority of the Board to comply with the terms of such resolutions.

I am of the opinion that the Board of Administration has the authority to comply with the provisions of the resolution before me, and the other resolutions, if they are the same as the one enclosed with your letter, excepting changes in names. However, this opinion is subject to the following exceptions:

KANNER BILL (Chapter 15891 of 1933)

1. Before any interest and sinking fund moneys may legally be remitted to said paying agent, in accordance with the terms of such resolution, you must first satisfy yourself, where such moneys have been actually impounded under writs of mandamus, that the relator in such writ has consented to such remittance.

2. Where, prior to such remittance, writs of mandamus have been filed, seeking to impound interest and sinking fund moneys, which have not been impounded, due to the service of prior writs not finally adjudicated, sufficient of the interest and sinking fund moneys should be retained still under impoundment, under such prior writs, to take care of the possibility of it being held that the funds so impounded were improperly impounded, and should enure to the benefit of said writs not actually impounding the amount sought; or the consent of the relator or relators in such writs not impounding sufficient moneys, should likewise be secured.

3. If it should be found necessary to retain any sinking fund moneys, for the reasons above set forth, the resolution, in my opinion, constitutes sufficient authority to make an additional transfer of Kanner Bill moneys to such extent, and remit such moneys to the paying agent, if necessary.

July 10, 1935.

BOARD OF ADMINISTRATION—OKEECHOBEE COUNTY—HOUSE
BILL NO. 1509, ACTS OF 1935, CHAPTER 17038

Dear Sir:

This acknowledges yours of July 17th with reference to the return to Okeechobee County of gasoline tax moneys under the terms of House Bill No. 1509, Acts of 1935.

The Act mentioned contains a specific proviso that remittance to the County of such gasoline funds is subject to said County "having provided for the interest or sinking fund of its or their road bonds."

You advise that according to the records of your office, Okeechobee County is some half million dollars in arrears in the road bond interest or principal payments.

It is my opinion that under the Act involved, the Board of Administration is without authority to return or remit the gasoline funds to such County because of the arrearage now existing. The terms of the Act are specific, and to my mind contemplate only a surplus after the interest and sinking fund of the bond issues involved have been provided for.

KANNER BILL (Chapter 15891 of 1933)

July 18, 1935.

BOARD OF ADMINISTRATION—MANATEE COUNTY—REFUNDING
OPERATIONS ON SPLIT ISSUE WITH SARASOTA COUNTY*Dear Sir:*

This acknowledges your communication of July 8, 1935, regarding the above matter.

Under date of July 1, 1915, Manatee County issued bonds known as "FUNDING BONDS" in the amount of \$50,000.00 for road purposes. In 1921 Sarasota County was created out of territory formerly embraced within Manatee County, and assumed 29.419% of the then outstanding indebtedness of Manatee County, which included the said \$50,000.00 bond issue. Such percentage would amount to \$14,709.50.

The Boards of County Commissioners of the two counties have now tentatively agreed that Sarasota County should issue refunding bonds in the amount of its assumed portion, such refunding bonds to be delivered to Manatee County and placed in the 1915 funding bond sinking fund. Manatee County will then issue refunding bonds for the balance of the \$50,000.00 issue.

The question involved is whether or not refunding bonds issued by Sarasota County would be entitled to participate in Sarasota County's share of the gasoline tax moneys allocated to such county. It is my opinion that under the decision of the Supreme Court, in the case of *State ex rel Johnson versus Sholtz*, 156 So. 331, the present obligation of Sarasota County to Manatee County is in the nature of an open account, and that upon the outstanding \$50,000.00 issue of bonds there is no direct liability on the part of Sarasota County. It, therefore, is not a question of "refunding" on the part of Sarasota County; but it is a question of issuing de novo bonds to represent or fund a present indebtedness existing by way of an open account. Therefore, under the express terms of Section 19 of Chapter 14486, Laws of Florida, Acts of 1929, the bonds involved would not be bonds entitled to participate in the county's share of the gasoline tax moneys.

July 18, 1935.

BOARD OF ADMINISTRATION—LAKE COUNTY—REMITTANCE OF
GASOLINE TAX MONEYS UNDER HOUSE BILL NO. 1391,
CHAPTER 16830, ACTS OF 1935*Dear Sir:*

This answers yours of June 11th regarding the above.

The Act mentioned provides for the purchase by the Board of Administration of bonds owned or held by the said County upon the

KANNER BILL (Chapter 15891 of 1933)

request of the Board of County Commissioners. Section 5 provides that the funds derived from such purchase shall be deposited by the Board of County Commissioners in a special fund to be used to pay the expense of refunding bonds.

At its meeting on June 3, 1935, the Board of County Commissioners of Lake County passed a resolution requesting the Board of Administration to purchase certain bonds and to pay the moneys into the general fund, road and bridge fund, fine and forfeiture fund, and agricultural fund, respectively, of said County.

It is my opinion that the Board of Administration is not authorized to comply with the request contained in said resolution. Said House Bill No. 1391 is clearly unconstitutional, but we do not need to consider that, inasmuch as the sole authority for the Board to act in the matter involved is contained in said House Bill 1391, and in acting thereunder the Board of Administration would be bound to remit the funds solely for deposit in a special fund to be used to pay the expense of refunding bonds, and for no other purposes.

July 10, 1935.

**BOARD OF ADMINISTRATION—DADE COUNTY—AUTHORITY OF
BOARD TO COMPLY WITH REQUEST OF COUNTY COMMISSIONERS
WITH REFERENCE TO PURCHASE AND SALE
OF SINKING FUND SECURITIES**

Dear Sir:

This is in response to yours of July 2nd, involving the above matter.

The facts are as follows: Special Road and Bridge District No. 2 of Dade County has in its sinking fund \$10,000.00 worth of Dade County Court House and Jail bonds which fell due July 1, 1936. Special Road and Bridge District No. 3 of Dade County has \$20,000.00 in similar bonds of similar maturity. These securities are in the custody of the Board of Administration under Chapter 14456, Acts of 1929.

The County proposes to buy these bonds at par with funds in its hands; and then the transaction contemplates that the Board of Administration will purchase \$30,000.00 par value of past due county-wide road and bridge bonds held by the County Commissioners in sinking funds under their jurisdiction, said \$30,000.00 worth of bonds to be paid for out of the county-wide road and bridge bond funds in the custody of the Board of Administration.

The net result will then be to pay into the funds of District No. 3 sufficient to meet its current maturities and to District No. 3 sufficient to pay its maturities up to January 1937, and the county-wide account would then retire \$30,000.00 of its obligations which matured

KANNER BILL (Chapter 15891 of 1933)

in 1933 and 1934. These 1933 and 1934 maturities are contemplated to be refunded and a like amount of the refunding bonds could be cancelled.

All the bonds involved are past due, and when we speak of "purchase" we really mean "payment".

It is my opinion that the Board of Administration is not authorized to effect the transaction involved because the "purchase" of the \$30,000.00 past due county-wide road and bridge bonds held by the County Commissioners in sinking funds administered by them would amount to payment of the same, and under such circumstances would amount to a preferential payment thereof.

If the moneys involved in the county-wide account were impounded by mandamus proceedings, it might be possible, on the theory of compromising pending litigation, to bring about the same result, to-wit: the payment of the \$30,000.00 worth of county-wide bonds.

June 20, 1935.

BOARD OF ADMINISTRATION, APPORTIONMENT GASOLINE TAX

Dear Sir:

I have been requested by Honorable H. G. Murphy for an opinion as to whether you may perform the duties required by House Bill No. 1219, Chapter 17036, Acts of 1935. This Bill applies to all counties having a population of not less than 11,000 and not more than 11,700, according to the last State census, and includes the counties of Hardee, Okaloosa, Pasco and Taylor, according to what purports to be the official census report of 1935.

The Act provides that one-half the gasoline tax funds apportioned to those counties shall be paid to the Board of County Commissioners to be used for county purposes, upon resolution of the Board of County Commissioners as therein provided.

The constitutionality of the Act is extremely doubtful by reason of the narrow scope of its applicability, but unless and until the Courts determine its constitutional validity your Board would be justified and protected in assuming it to be valid, and acting accordingly.

KANNER BILL (Chapter 15891 of 1933)

June 4, 1935.

BOARD OF ADMINISTRATION—FLAGLER COUNTY—POWER TO
CORRECT OMISSION OF PORTION OF COUNTY'S OBLIGA-
TION ASSUMED ON COUNTY DIVISION—CHAPTER 14486.
LAWS OF FLORIDA, ACTS OF 1929*Dear Sir:*

This acknowledges yours of May 25th, wherein you enclose copy of tentative draft of resolution which it is contemplated the Board of County Commissioners of Flagler County will pass.

Flagler County was originally part of St. Johns County, and pursuant to Chapter 7399, Laws of Florida, Acts of 1917, Flagler County was created out of St. Johns County, and on September 23, 1919, the Boards of County Commissioners met and agreed that Flagler County would assume 8.2% of a certain bond issue known as the Brick Road Bond Issue, in the original amount of 650,000.

On May 1, 1925, the then remaining outstanding bonds in the sum of \$427,000 of said issue were refunded by St. Johns County, Flagler County not being thereafter liable directly upon said bonds, but continuing liable as upon an open account for its said assumed portion.

There has never been certified to the State Board of Administration by Flagler County any amount whatever as its assumed portion of such indebtedness, and no gasoline tax revenues have ever been allocated on account thereof.

The proposed resolution would provide for a correction of this situation, so as to have the participating amount of Flagler County's gasoline tax paid over to St. Johns County; would authorize and instruct the Board of Administration to pay to St. Johns County such portion of the gasoline tax money; would require the Clerk of the Board of County Commissioners to certify to the Board of Administration the original amount of indebtedness assumed by Flagler County, together with amounts paid thereon, and request and instruct the Board of Administration to pay during the coming fiscal year beginning October 1, 1935, an amount sufficient to pay Flagler County's share of interest from the date of last payment of interest up to November 1, 1935, and pay to St. Johns County each year from gasoline taxes due Flagler County, a sum sufficient to pay Flagler County's share of the interest on said indebtedness, together with one-ninth of the present indebtedness due on the principal.

It is my opinion that this assumed indebtedness is in the nature of an open account between the counties, and cannot be used as the basis for a re-allocation of the gasoline tax among the various road and bridge bond issues of Flagler County, so as to permit the proposed transaction to be consummated.

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In fact, this identical question involving the same counties was decided by our Supreme Court in *State ex rel Johnson vs. Sholtz*, 156 So. 331, wherein it was held that the ad valorem taxes for the payment of this assumed obligation was not derived for the payment of bonds, but rather to carry out the agreement between the two counties arrived at upon the creation of Flagler County; and that Flagler County as such was never obligated to pay any of the bonds issued by St. Johns County, and that the refunding bonds were the obligations solely of St. Johns County. On this basis it was held that the Board of Administration had no right to administer these funds, and that the same should be returned to the County Commissioners of Flagler County.

By analogy from this decision, no gasoline tax revenues may be allocated to the payment of this assumed obligation, and therefore, I answer that in my opinion the transaction sought to be effected by the proposed resolution may not legally be carried out by the Board of Administration.

I herewith enclose your file handed me with your communication.

June 5, 1935.

**BOARD OF ADMINISTRATION—OSCEOLA COUNTY—AUTHORITY
TO COMPLY WITH RESOLUTION REQUESTING BOARD TO
WITHHOLD PAYMENT OF DEBT-SERVICE ITEMS OF
GASOLINE TAX MONEYS**

Dear Sir:

This acknowledges your communication of April 22, 1935, wherein you enclose two resolutions of the Board of County Commissioners of Osceola County. The first of said resolutions dated November 5, 1934, rejected the provisions of the Kanner Act (Chapter 15891, Acts of 1933), revised the budget of the Board of County Commissioners, and appropriated gasoline tax moneys for debt-service purposes on the road and bridge bonds.

The second resolution requests the State Board of Administration to withhold payments or disbursements of any further sums of money in its hands resulting from gasoline tax revenues belonging to Osceola County until further action by the said Board.

The first resolution indicates that the revision in the budget was made because of pending mandamus proceedings resulting from a failure to make a sufficient levy; the second resolution indicates that either the original mandamus proceedings or others are now pending; and that it is to the best interest of the County to not expend the gasoline moneys until the questions involved in the said mandamus suits have been determined.

KANNER BILL (Chapter 15891 of 1933)

It is my opinion that the Board of Administration is not authorized to comply with the second resolution by withholding the payment or disbursement of such funds. The mere bringing of a suit for a levy without an actual impounding of the funds, in no manner affects the power or duty of the Board of Administration to continue the disbursement thereof under the statute.

Furthermore, the resolution of November 5, 1934, constituted an appropriation of these funds, and their subsequent diversion to other purposes or an attempt to so divert them or otherwise differently dispose of them is of no avail.

June 5, 1935.

**BOARD OF ADMINISTRATION—PUTNAM COUNTY—PLAN FOR
REPAYMENT OF FUNDS ADVANCED TO OTHER FUNDS**

Dear Sir:

This acknowledges your communication of May 8, 1935, wherein you advise that in the latter part of 1932, special road and bridge district No. 7 of Putnam County needed approximately \$13,000 to meet a certain maturity then falling due; and that upon request of the Board of Bond Trustees of said County, \$9,000 was advanced from the funds to the credit of the County Highway Bond issue of July 1, 1926, and \$4,000 from the Court House Bridge and Hard Surface Highway Bonds of May 7, 1909; that the said Board of Bond Trustees agreed to repay said funds out of toll moneys in their hands, but such moneys were at the last minute caught in the failure of the Putnam National Bank of Palatka where they were on deposit.

It was then agreed that such advances should be repaid out of moneys recovered by the Bond Trustees from collateral held as security for deposit of funds in the said Putnam National Bank.

Inquiry is now made of you whether or not the Board of Administration may settle this matter by following one of the two courses, to-wit:

(1) The Board of Administration accept in settlement of the \$13,000 advances past due bonds of the County Highway Issue of July 7, 1926; \$5,000 of which are part of an \$18,000 maturity due July 1, 1933 (which is the oldest past due principal item), and \$8,000 of which is part of a \$20,000 maturity due July 1, 1934.

(2) As an alternative to (1), that the Board permit the \$9,000 advance from the County Highway Bond fund to be repaid with \$9,000 in past due bonds of the same issue.

It is my opinion that you may not follow the first plan above outlined, because it will clearly amount to a preferential payment of the funds in hand of the \$8,000 in bonds due July 1, 1934.

KANNER BILL (Chapter 15891 of 1933)

As to the second alternative, you advise that there are now more than sufficient funds on hand to meet the July 1, 1935, interest maturity, and that it appears entirely possible that sufficient funds will be available by said July 1st to pay the entire \$18,000 outstanding defaulted principal less the \$5,000 so taken in.

I therefore advise that provided funds are available to pay the interest maturities and leave a surplus of \$13,000 so that the remainder of the \$18,000 maturity may be paid in full, you are authorized to accept the \$5,000 in bonds mentioned as a credit in payment of this advance from the County Highway Fund of the July 1, 1926 issue.

June 11, 1935.

**BOARD OF ADMINISTRATION—PURCHASE OF BONDS UNDER
CHAPTER 15891, ACTS OF 1933 (KANNER BILL) WHICH
HAVE BEEN TAKEN IN UNDER CHAPTER 16252,
ACTS OF 1933 (FUTCH BILL)**

Dear Sir:

This acknowledges yours of June 5th, wherein you inquire whether or not the Board of Administration may purchase under the provisions of Chapter 15891, Laws of Florida, Acts of 1933, commonly known as the Kanner Bill, bonds which have been taken in for taxes under Chapter 16252, Laws of Florida, Acts of 1933, commonly known as the Futch Bill.

It is my opinion that the Clerk of the Circuit Court has no authority to dispose of these bonds in such manner, and that therefore the Board of Administration is not authorized to so purchase them.

May 31, 1935.

**BOARD OF ADMINISTRATION—LAKE COUNTY—HOUSE BILL NO.
1392, CHAPTER 16807, ACTS OF 1935**

Dear Sir:

This is in response to your oral inquiry as to whether or not the Board of Administration is authorized to comply with House Bill No. 1392, 1935 Session.

This bill provides for the payment of the costs of refunding operations in counties of a certain population out of money in the hands of the Board of Administration, as requested by the Board of County Commissioners.

You have also handed me resolution from the Board of County Commissioners of Lake County making such request.

KANNER BILL (Chapter 15891 of 1933)

I beg to advise that the above mentioned bill is unconstitutional but until declared so by a court of competent jurisdiction the Board of Administration may act thereon and be protected thereby. The resolution of the Board of County Commissioners is sufficient authorization for your compliance therewith.

May 24, 1935.

BOARD OF ADMINISTRATION—VOLUSIA COUNTY—TURNBULL
SPECIAL ROAD AND BRIDGE DISTRICT—DAYTONA BEACH
SPECIAL ROAD AND BRIDGE DISTRICT

Dear Sir:

This is in answer to your inquiry under date of March 29, 1935, as supplemented by your communication of May 20, 1935, regarding the above matters.

You have enclosed copies of resolutions passed by the Board of County Commissioners of Volusia County, Florida, wherein and whereby the said Board re-allocates the levies for debt-service purposes in the above mentioned two districts, so as to provide the payment of specific securities owned by a relator who had theretofore instituted mandamus proceedings, and whose suits were dismissed upon such re-allocation.

The Board of County Commissioners was evidently acting upon authority of the case of *Harris vs. City of Fort Pierce*, 111 Fla. 394, 149 So. 338.

It is my opinion that you may proceed to carry out the request contained in said resolutions with the following exceptions:

The Board of Administration is not authorized nor required, nor is it under any enforceable duty, to pay interest after maturity on past due bonds.

This is in line with my opinion of June 1st, 1934, and I therefore advise that no interest after maturity may be paid on the past due bonds involved.

Section 8 of the Resolution with reference to Turnbull Special Road and Bridge District is so indefinite that I advise you are not authorized to proceed thereunder with reference to the interest involved, which evidently refers to interest on bonds numbered 18 to 23 inclusive, dated July 1, 1925, and due July 1, 1932.

The question of interest on bonds 61, 62, and 63 of Daytona Beach Special Road and Bridge District is covered by what is hereinabove stated.

KANNER BILL (Chapter 15891 of 1933)

I also refer you to my prior opinion under date of March 29, 1935, with reference to a similar situation.

I return herewith your file as transmitted to me in connection with your inquiry.

May 24, 1935.

**BOARD OF ADMINISTRATION—PURCHASE OF BONDS UNDER
CHAPTER 15891, ACTS OF 1933, WHERE COUPONS HAVE
BEEN REDUCED TO JUDGMENT**

Dear Sir:

This is in response to your communication of the 10th inst., regarding the above matter.

The situation presented involves the purchase of certain bonds under the provisions of Chapter 15891, Acts of 1933, commonly known as the Kanner Act, where certain coupons attached to such bonds have been reduced to judgment, along with all other coupons deposited with a bondholders protective committee.

It is my opinion, in line with my prior opinion under date of December 11, 1934, reported on page 153 of the 1933-34 Report, that you are authorized to purchase these bonds and at the same time receive a partial satisfaction of the judgment to the extent of the coupons and interest thereon included in such judgment. You should not take any assignment of the judgment but a partial satisfaction thereof.

May 18, 1935.

**BOARD OF ADMINISTRATION—MYAKKA SPECIAL ROAD AND
BRIDGE DISTRICT—MANATEE COUNTY—DISBURSEMENT
OF FUNDS ON HAND**

Dear Sir:

This acknowledges yours of April 5, 1935, and supplemental letter of May 10, 1935, together with certified copy of resolution of the Board of County Commissioners of Manatee County.

The situation revealed by your communication is briefly as follows:

There is a \$90,000 bond issue outstanding under date of March 1, 1923 at six per cent interest. \$20,000 (or 20 of these bonds) matured March 1, 1935. Of these twenty bonds, nineteen are owned by one individual. The entire issue is in process of refunding, and refunding bonds have been tendered to present bondholders.

KANNER BILL (Chapter 15891 of 1933)

The owner of the said nineteen bonds has offered, if three of the bonds are paid at par, to place the remainder on deposit with you to be exchanged for the refunding bonds when the program is completed, and to take five per cent interest for the remaining interest coupon on each of the nineteen bonds.

The resolution requests that this be done, and that the entire interest maturity due March 1, 1935, be paid at the refunding rate of five per cent.

You have advised me that today there is now a cash balance to the credit of this issue of \$6,866.48, which is amply sufficient to pay three of the bonds, hold sufficient for the owner of the remaining bonds maturing, and to pay interest, even at the rate of six per cent on the remaining seventy bonds in the issue.

I therefore advise that the Board of Administration may legally proceed to carry out the resolution of the Board of County Commissioners of Manatee County.

We herewith enclose matters in your file referred to us.

April 23, 1935.

BOARD OF ADMINISTRATION, STATE EX REL GILLESPIE ET AL.
VS. SHOLTZ ET AL—CIRCUIT COURT LEON COUNTY—
SUMTER COUNTY

Dear Sir:

This acknowledges yours of the 23rd instant regarding the above matter. You enclose copy of alternative writ of mandamus served upon you in the above entitled cause at 9:45 this morning. The suit seeks to require payment of one hundred and sixty odd thousands of dollars out of ad valorem and gasoline tax moneys in the custody of the Board of Administration and in your custody as County Treasurer Ex Officio, standing to the credit of Sumter County.

You also call attention to the passage of Senate Bill No. 361 approved by the Governor Saturday last, requiring the Comptroller to draw and the State Treasurer as Ex Officio Treasurer of Sumter County to pay certain warrants in payment of approximately \$32,000 in outstanding obligations, bills, debts, and liens due and owing by Sumter County to various creditors, such payment to be made out of the gasoline tax moneys.

You also advise that you understand the Board of Administration warrants have been signed and were on the desk of the Comptroller ready to be delivered at the time of the service of the above mentioned writ; you do not know whether actual delivery of such warrants has been made, but you do know that none of said warrants has been paid.

KANNER BILL (Chapter 15891 of 1933)

It is my opinion that prior to actual disbursement of the funds by payment of the warrants, the effect of the service of the writ of mandamus is to impound those funds in your hands, and that you should not pay the same out pending an adjudication by the Courts as to whether or not such funds are liable to the payment of the securities involved in the alternative writ.

From the above it is apparent that there are not sufficient funds to satisfy both the writ and comply with the said Senate Bill 361. Payments not having been made of the warrants drawn pursuant to said Senate Bill 361, the effect of the service of the writ is to impound the funds in your hands covered by the writ, and it is now for the Courts to determine the rights involved.

March 29, 1935.

BOARD OF ADMINISTRATION—PAYMENT OF INTEREST ON PAST-DUE BONDS FOLLOWING PAYMENT OF PRINCIPAL THEREOF

Dear Sir:

This is in response to your communication of March 22, wherein you advise that bondholders owning bonds of a road and bridge district received partial payment, pro-rata with other bondholders, and deposited the bonds under a trust receipt with you. As funds accrued, the principal of said bonds were ultimately paid in full and the bondholders now make claim for interest from the maturity date until final payment of the balances remaining unpaid in the interim.

You ask whether or not the Board of Administration is authorized to pay such interest.

The bond provides for interest thereon "from the date of this bond until paid, at the rate of 6% per annum, payable semi-annually, upon presentation and surrender of the annexed interest coupons as they severally become due."

It is my opinion that the Board of Administration may not legally disburse funds in payment of the interest claimed nor is it under any duty to do so.

March 29, 1935.

BREVARD COUNTY—BOARD OF ADMINISTRATION—AUTHORITY TO COMPLY WITH RESOLUTION RESPECTING ALLOCATION AND APPROPRIATION OF LEVY ALREADY MADE

Dear Sir:

This is in response to your communication of March 16, 1935, wherein you enclose copy of resolution adopted by the Board of County Com-

KANNER BILL (Chapter 15891 of 1933)

missioners of Brevard County under date of March 5, 1935.

While the resolution does not so state, you advise that it is your understanding that the said resolution was in compliance with a peremptory writ of mandamus commanding a four mill levy for the payment of bonds owned by the Havana State Bank.

The resolution appropriates and allocates as of the date of the original levy resolution, to-wit, September 17, 1934, a four mill tax levy for the sole and exclusive purpose of paying the bonds involved.

You ask whether or not the Board of Administration may carry out the terms of this resolution as to moneys heretofore or hereafter received as a result of the said resolution. In accordance with my opinion under date of January 24, 1935, in a similar transaction involving Atlantic-Gulf Special Road and Bridge District, I advise that the Board of Administration may comply with the terms of this resolution. (See *Harris vs. City of Fort Pierce*, 111 Fla. 374, 149 So. 338.)

I am herewith enclosing the resolution involved.

March 29, 1935.

WAKULLA COUNTY—BOARD OF ADMINISTRATION—AUTHORITY TO SELL BONDS HELD IN A SINKING FUND FOR LESS THAN PAR

Dear Sir:

This acknowledges yours of the 16th, wherein you enclose copy of resolution adopted by the Board of County Commissioners of Wakulla County under date of March 4, 1935, directing the Board of Administration to sell to a named individual \$41,000 par value of various county and special road and bridge district bonds, which bonds were, by direction of the Wakulla County Board, purchased several years ago as sinking fund investments for the said Wakulla County. The sale price contemplated is \$31,740.

Pursuant to my opinion under date of October 31, 1934 (see pages 181-2, 1933-34 Report of Attorney General), I advise that the Board of Administration has no authority to accept less than par for bonds held in sinking fund accounts nor does the Board of Administration have authority to change the form of an investment held in a sinking fund accounts. (See *State ex rel Pinellas County vs. Sholtz*, 155 So. 736).

I am returning herewith matters enclosed in your communication.

KANNER BILL (Chapter 15891 of 1933)

March 14, 1935.

UNION COUNTY—OPERATION UNDER KANNER BILL—CHAPTER
15891, ACTS OF 1933*Dear Sir:*

This is in response to your inquiry concerning the right of Union County to invoke the provisions of Chapter 15891, Laws of Florida, Acts of 1933, commonly known as the Kanner Act.

You have submitted to us a Resolution invoking the Kanner Act under date of February 4, 1935. You advise that subsequent thereto and about February 27, 1935, pursuant to bids, you received certain offerings, and that the Board of County Commissioners has now passed under date of March 5, 1935, a resolution accepting certain of the offerings so made.

We have also been furnished with a copy of a peremptory writ of mandamus issued by the Supreme Court in the case of *State ex rel Gillespie et al, Relators, vs. J. L. Douglas et al*, as and constituting the Board of Commissioners of Union County, Florida, and the Clerk of the Circuit Court of such county, and the Tax Assessor thereof, as Respondents.

This peremptory writ of mandamus commands the revision of the budget for Union County for the year 1934-35, so as to include therein an appropriation item equal to the amount certified by the Board of Administration as necessary to be raised by ad valorem taxes for principal, interest, and sinking fund requirements for the fiscal year ending September 30, 1935, to pay the interest on certain issues of Union County bonds; and the levying of a tax sufficient to raise such amount.

We have checked the proceedings in the mandamus action, and find the record shows that the gasoline tax moneys were estimated by the Board of Administration in its annual report under Chapter 14486, Acts of 1929, and the same was used by the Board of Bond Trustees (Union County still has a Board of Bond Trustees functioning) in certifying to the Board of County Commissioners the amount of ad valorem taxes which would be necessary.

It is my opinion that under the facts stated in the light of this peremptory writ of mandamus, the Board of County Commissioners may not now divert the gasoline tax moneys for use under the said Kanner Act.

We enclose herewith copy of the peremptory writ furnished us, which we ask that you return to the Honorable Joe Hill Williams, Attorney for the Board of County Commissioners, Lake Butler, Florida.

KANNER BILL (Chapter 15891 of 1933)

January 30, 1935.

BOARD OF ADMINISTRATION—COMPROMISE OF PENDING MANDAMUS PROCEEDINGS—TWO SUITS, STATE EX REL DAVIN VS. SHOLTZ (CIRCUIT COURT LEON COUNTY, NOS. 2271 AND 2294—OKEECHOBEE COUNTY)

Dear Sir:

This is in response to your communication of January 28th, wherein you enclose certified copy of Resolution adopted by the Board of County Commissioners of Okeechobee County, requesting and authorizing the Board of Administration to compromise the above two causes.

Cause No. 2271 involves a \$1000 bond and coupons totalling \$90, and impounded \$1090. Cause No. 2294 involved two bonds each in the sum of \$1000 and coupons totalling \$450, but only impounded \$2157.91.

The contemplated settlement as disclosed by the Resolution involves the inclusion of an additional bond not covered in either of the said suits, but calls for payment of \$3500 when the two suits impounded but \$3247.91.

It is my opinion that the Board of Administration is not authorized to use any funds except those actually impounded by the writs sued out in the cause sought to be compromised in any of these matters involving a settlement or compromise of pending litigation. Otherwise the ad valorem tax moneys would virtually be used to effect a preferential payment to the relator in a mandamus proceeding.

I return herewith the Resolution enclosed in your letter.

January 24, 1935.

BOARD OF ADMINISTRATION—AUTHORITY TO SETTLE PENDING LITIGATION BY COMPROMISE AND PAYMENT

Dear Sir:

This is in response to your three communications of January tenth, 1935, all of which involve the authority of the Board of Administration to settle litigation now pending against it by compromise and payment of the claims involved.

Pursuant to my prior opinion, under date of January 22, 1935, in a like situation, I now advise that upon request of the Board of County Commissioners or other body having authority in the premises, the Board of Administration is authorized to compromise and settle litigation of this sort by payment of the claims involved. Such payment, of course, is to be made only from ad valorem tax moneys impounded by the writs of mandamus issued in the causes to be settled.

KANNER BILL (Chapter 15891 of 1933)

I further advise that there is no legal objection, in the event the particular writ of mandamus has impounded an insufficient fund to pay relator's claim in full, to allow an amendment so as to reduce the claim to the extent only of the funds impounded.

I further advise that the question of expediency, policy or propriety of making each particular settlement, must be determined by the Board of Administration in the light of the facts and circumstances of each particular case.

I herewith enclose all documents enclosed in your communications of January 10, 1935.

January 24, 1935.

STATE EX REL BEN HUR LIFE ASSOCIATION VS. BOARD OF BOND
TRUSTEES, ATLANTIC GULF AND SPECIAL ROAD AND BRIDGE
DISTRICT—CIRCUIT COURT, INDIAN RIVER COUNTY, NO.
1537—BOARD OF ADMINISTRATION—AUTHORITY TO
COMPLY WITH RESOLUTION EFFECTING SETTLE-
MENT OF ABOVE CAUSE

Dear Sir:

This acknowledges receipt of your communication of January tenth, involving the above matter.

The above suit was instituted to secure payment of interest due March first and September first, 1935, aggregating \$2200.00, represented by interest coupons owned by the relator in the above cause. Peremptory writ was issued December 31, 1934, requiring a levy to be made for the payment of said items during the fiscal year 1934-35.

The fiscal year having already begun, and evidently acting upon the authority of the case of State ex rel Harris vs. City of Fort Pierce, 111 Fla. 374, 149 So. 338, the Board of Bond Trustees passed its resolution amending its prior resolution of June 7, 1934, so as to appropriate and allocate three mills of the prior fifteen mill levy to the payment of relator's said claim. This was done in lieu of an additional levy.

It is my opinion that the Board of Administration is authorized to carry out the terms of the said resolution, as to moneys heretofore or hereafter received as a result of the fifteen mill levy for the said fiscal year to the extent of three mills thereof to be credited to a special account for the payment of the relator's said coupons.

I am returning herewith the resolution involved.

KANNER BILL (Chapter 15891 of 1933)

January 25, 1935.

BOARD OF ADMINISTRATION HAS AUTHORITY TO ADOPT SETTLEMENT MADE BY LIQUIDATOR AND BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY CONCERNING CLAIM OF SPECIAL ROAD AND BRIDGE DISTRICT NO. 9

Dear Sir:

I have your letter of January 17th, in reference to the authority of the Board of Administration to adopt a settlement made by the Liquidator of a defunct bank and the Board of County Commissioners of Lake County concerning the claim of Special Road and Bridge District No. 9. In your letter, you state:

"This refers to a mortgage and note of H. H. Ham, \$6,000 dated May 10, 1930, due March 15, 1931, with interest at 8% (no payment of principal or interest having ever been made) which came into the possession of the Board of Administration at the time of the general turnover of moneys, securities, claims, etc., by the Bond Trustees of Special Road and Bridge District No. 9 of Lake County, same being a part of a total amount of notes, mortgages, etc., aggregating \$28,063.49 so turned over and transferred to this Board by said Bond Trustees, as collateral security theretofore accepted by them to protect \$17,000 road and bridge bond funds deposited by said Trustees (in the form of Certificates of Deposit) in the Citizens Bank of Eustis, (now defunct) which said deposit and/or claim therefor has been subsequently reduced by partial payments and credits to \$16,897.56.

"You will note * * * * * that the Liquidator's Certificate representing this claim has, pursuant to purported agreement between the County Attorney and the said Liquidator, been debited \$8,920.00 being the amount of the mortgage \$6,000 plus accrued interest \$2,920, leaving a balance due on the said claim of \$7,977.56.

"County Commissioners' resolution of October 1, 1934, not received by me until December 26th, appears to ratify the action of that Board's attorney in accepting the assignment of Ham mortgage by the Liquidator of the *Bank of Umatilla* (this is a palpable error in copying or otherwise, as the transaction concerns the Citizens Bank of Eustis) in settlement of the claim on the funds of Special Road and Bridge District No. 9 of Lake County, but this would not appear to be sufficient authority for the Board of Administration and/or the undersigned to accept the Liquidator's charge hereinbefore mentioned, and certainly not for the sum of \$8,920 since the mortgage is for only \$6,000 and we can find nothing anywhere in any of the papers to indicate that the County officials contemplated making any such allowance representing above five years' accrued interest on said mortgage and note."

KANNER BILL (Chapter 15891 of 1933)

that the transaction has been approved by an order of the Circuit Court.

You request my opinion as to whether or not the Board of Administration has authority to accept the settlement as made by the Board of County Commissioners of Lake County with the Liquidator.

Title to the note and mortgage being in the Board of Administration at the time of the purported settlement between the Board of County Commissioners and the Liquidator, the transaction should have been between the Board of Administration and the Liquidator, and the formal assignment of mortgage should have been made to the Board of Administration.

It is my opinion that the Board of Administration has authority to accept the settlement made by the Board of County Commissioners. The Board of Administration had authority to make the settlement at the time it was made by the Board of County Commissioners and I see no reason why this settlement may not be adopted and agreed to by the Board of Administration. "In a situation such as presented by you, it is my opinion that the Board of Administration has authority to make the best settlement that can be made concerning the assets of a fund being administered by it where the value of the asset is extremely doubtful. If the Board did not have this authority, the funds being administered by it in such a situation would be depleted rather than conserved as is the clear intention of the law." See Opinion to you of January 16, 1935.

If the Board of Administration accepts the settlement as proposed, I suggest that the mortgage be formally assigned by the Board of County Commissioners to the Board of Administration.

This opinion is not to be considered as in conflict with or in any way modifying what was said in my opinions of October 7, 1933, January 19, 1934, and October 31, 1934.

I am returning herewith your file.

January 22, 1935.

STATE EX REL MILTON McEWEN VS. SHOLTZ ET AL. (CIRCUIT COURT LEON COUNTY, NO. 2284)

Dear Sir:

This acknowledges yours of the 21st instant, wherein you advise that the Board of Administration has been requested to make a compromise settlement of the above entitled mandamus proceeding at the rate of ninety cents on the dollar.

You enclose a copy of relator's compromise offer, together with certified copy of resolution of Board of County Commissioners of Hardee

KANNER BILL (Chapter 15891 of 1933)

County, agreeing to accept the same, and requesting the Board of Administration to make settlement on such basis.

It also appears from your letter that the alternative writ has impounded sufficient ad valorem funds in the accounts of the issues involved to pay the claim of two items in full and all items at compromise rate.

You ask for my opinion as to the legality and propriety of the proposed compromise settlement.

I advise that under the decision of the Supreme Court, ad valorem tax moneys may be impounded by a mandamus writ, and the Board of Administration may be required to pay out under the first-come first-served doctrine such funds in discharge of obligations, for which the levy resulting in such funds was made.

I further advise that upon request of the Board of County Commissioners, or other body having authority in the premises, the Board of Administration is authorized to compromise and settle litigation of this sort. The question of the expediency, policy, or propriety of making each particular settlement, however, must be determined by the Board of Administration in the light of the facts and circumstances of each particular case.

I return herewith all matters enclosed in your communication.

January 16, 1935.

**BOARD OF ADMINISTRATION HAS AUTHORITY TO CANCEL NOTE
AND MORTGAGE HELD BY IT FOR THE ACCOUNT OF SUMTER
COUNTY GENERAL ROAD BONDS AND ACCEPT IN LIEU
THEREOF BONDS ISSUED BY FEDERAL FARM
MORTGAGE CORPORATION**

Dear Sir:

This will acknowledge receipt of your letter to which is attached a certified copy of an order of the Court dismissing the bankruptcy proceeding concerning Sumter County. You state that the Board of Administration now holds, for the account of Sumter County General Road Bonds, a note in the amount of \$1,250.00 secured by a mortgage on lands in Sumter County, which note and mortgage is of doubtful value; this asset came into the hands of the Board of Administration by virtue of a settlement between the Bond Account and the defaulted bank, the liability of the bank having accrued prior to the time that the Board of Administration began to function; that the Board of Administration has been requested by the Board of County Commissioners of Sumter County to cancel the note and mortgage and to accept in lieu thereof, bonds issued by the Federal Farm Mortgage Corporation in the amount

KANNER BILL (Chapter 15891 of 1933)

of \$398.25. You request my opinion as to the authority of the Board of Administration to comply with the request of the Board of County Commissioners of Sumter County.

The Board of Administration has authority to carry out the transaction as proposed, if a majority of its members are of the opinion that it is to the best interest of the bond account. In a situation such as presented by you, it is my opinion that the Board of Administration has authority to make the best settlement that can be made concerning the assets of a fund being administered by it where the value of the asset is extremely doubtful. If the Board did not have this authority, the funds being administered by it in such a situation would be depleted rather than conserved as is the clear intention of the law.

This opinion is not to be considered as in conflict with, or in any way modifying what was said in my opinions of October 7, 1933, January 19, 1934, and October 31, 1934.

I am returning certified copy of order of dismissal.

SECTION 2

BONDS

February 26, 1936.

BOARD OF ADMINISTRATION—BONDS PLEDGED AS SECURITY
FOR PUBLIC DEPOSITS—AUTHORITY TO ACCEPT REFUNDING
BONDS IN LIEU THEREOF, AFTER INSOLVENCY OF BANK*Dear Sir:*

I have your letter of February 21, 1936, in which you state that the Fort Pierce, Florida, bank closed on September 9, 1932, thus freezing a deposit, at which time collateral security for the balance then on deposit consisted of \$9,000.00 of Brevard Special Road and Bridge District Refunding bonds, 5%, dated October 1, 1929, due October 1, 1941, being bonds numbers 421 to 429 inclusive, which were pledged February 8, 1932.

You further state that said County has recently refunded certain of its bond issues, including the above issue of bonds, and that the liquidating agent of said bank has suggested to you that such bonds be exchanged for like amount of new Refunding bonds bearing $4\frac{1}{2}\%$ interest from April 1, 1935, to April 1, 1945, and 5% interest from April 1, 1945, to April 1, 1964, the past due interest on the old bonds to be paid in cash at $3\frac{1}{2}\%$, upon delivery of such new Refunding bonds.

You request my opinion as to whether or not you have authority to make such exchange as suggested.

In line with my opinion under date of October 7, 1933, and my opinion under date of January 19, 1934, I have to advise that Chapter 14486, Laws of Florida, Acts of 1929, does not specifically authorize, nor is there any statute specifically authorizing, the exchange of bonds on the basis outlined. It cannot be said that such action is necessary in the performance of statutory duties. Therefore, in the absence of direct legislative authority and of any court decision authorizing such action, it is my opinion that you have not the authority to make the exchange of bonds on the basis suggested by the liquidating agent.

January 7, 1936.

BOARD OF ADMINISTRATION—FIRST NATIONAL BANK OF
PERRY—COLLATERAL DEPOSITS*Dear Sir:*

This will acknowledge receipt of your communication of December 27, 1935, enclosing letter addressed to you, with reference to the Board of Administration joining Mr. _____, who is Receiver of said First National Bank of Perry, in petitioning the Court for authority to dispose of bonds, held as collateral to secure deposits, at the best price

BONDS

obtainable, the proceeds to be held in trust by the Court until such time as the suit of Iron Ross, as Receiver of the First National Bank of Perry, v. W. V. Knott, et al., T. Eq. 21, to recover the collateral, has been adjudicated. You state that the Board of Administration has instructed that the matter be directed to the attention of this office for handling and advice to the Board.

It appears from the enclosed letter of Mr. _____, under date of December 16, 1935, that certain bonds of the Perry Hotel Company, now in default as to interest, are in your possession; that Mr. _____ believes that there is now a limited market for said bonds; and that it is further his belief that foreclosure proceedings are imminent.

Quite apart from the question of the power or authority of the Board to join in such petition to the court, it seems that, from a legal standpoint, the better procedure might be to hold on to the bonds in question until such time as an adjudication is had of the rights of the parties with respect to such collateral. It would seem that there is no necessity at this time of disposing of said bonds and placing the proceeds thereof in the treasury of the court. I am, therefore, of the opinion that, until the matter of rights is adjudicated, said bonds should be held intact.

SECTION 3

MISCELLANEOUS

July 9, 1936.

BOARD OF ADMINISTRATION—DESOTO COUNTY—PAYMENT OF
ATTORNEY'S FEES FROM GASOLINE TAX FUNDS*Dear Sir:*

Your letter of June 26, 1936, has been received. You have not received an earlier reply, as Judge Landis has been confined to his home as a result of his recent injuries in an automobile wreck.

We regret that there is no way in which we can consistently rule that this fee may be paid, under the law, from the source indicated. We do not question the fact that your services have been beneficial to the county in question, but it is simply one of those situations in which the law provides definitely as to the use of moneys, and they may not be used in other ways.

September 26, 1935.

BOARD OF ADMINISTRATION—MADISON COUNTY—AUTHORITY
TO EFFECT COMPROMISE OF NOTE HELD AS SECURITY
AGAINST FROZEN BALANCE IN DEFUNCT BANK*Dear Sir:*

This is in response to your communication of September 24, 1935, with reference to the above matter. You ask whether or not the Board of Administration is authorized to make a compromise settlement on account of a certain note held by it as security against a frozen balance in a defunct bank.

In line with my prior opinions under date of January 16, 1935, and January 25, 1935, involving situations in Sumter and Lake counties respectively, I am of the opinion that the Board of Administration is authorized to make the best settlement that can be made concerning the assets of a fund being administered by it where the value of the asset is extremely doubtful.

I suggest that the proper procedure is for the offer of compromise to be evidenced by a certified copy of resolution passed by the Board of County Commissioners of the county involved, which resolution should also request the Board of Administration to effect the settlement on the basis set forth and agreed to by the Board of County Commissioners and the debtor.

MISCELLANEOUS

July 18, 1935.

BOARD OF ADMINISTRATION—MADISON COUNTY—ASSIGNMENT
OF NOTE AND MORTGAGE HELD IN SINKING FUND—
CHAPTER 14486, ACTS OF 1929*Dear Sir:*

This is in response to your communication of June 14, 1935.

Pursuant to Chapter 14486, Acts of 1929, as part of the general turn-over by county bond trustees, there came into the possession of the Board of Administration a certain note secured by a mortgage which had been accepted by the said trustees prior to the time the Board of Administration was created, under pledge from a bank as security for county road bond funds deposited in said bank by said trustees.

The principal amount yet due is \$131.00 and the interest has accrued since 1930. You ask whether or not, upon payment of the sum of \$131.00, the Board of Administration will be authorized to assign this mortgage and note to a third person who is paying said sum.

It is my opinion that the Board of Administration does not have authority to thus in effect sell this asset to a third party.

June 19, 1935.

BOARD OF ADMINISTRATION—ST. JOHNS COUNTY—REFUNDS
FOR COMMISSIONS OF TAX COLLECTOR*Dear Sir:*

I acknowledge receipt of your letter of the 14th instant, with which you enclose certified copy of resolution by the Board of County Commissioners of St. Johns County, requesting that said Board of County Commissioners be refunded from funds in the hands of the Board of Administration to the credit of the road bond I. & S. funds of St. Johns County, in the aggregate of \$1,043.35, said amount having been paid by the Board of County Commissioners of said county to the county tax collector as his commission on collections of 1933 and 1934 of funds paid into the interest and sinking funds of said county.

It appears from your letter that it has always been the practice of the Board to allow collectors their commissions from road and bridge taxes collected, but that this has not been done as to the Tax Collector of St. Johns County, and that your records do not show that any commissions were deducted by him for the periods covered in the statement referred to.

I think it is proper under the circumstances that the Board reimburse the County from the Road Bond I. & S. fund to the credit of said county for the commissions thus paid to the Tax Collector.

I am returning herewith the enclosures with your letter.

MISCELLANEOUS

March 6, 1935.

BOARD OF ADMINISTRATION—TAX ASSESSORS' COMMISSIONS

Dear Sir:

This acknowledges yours of February 28th, enclosing correspondence to the Clerk of the Board of County Commissioners, with reference to a proper manner of pro-rating among all the funds involved, the higher rates of commission which the law provides that assessors shall receive, to-wit: 10% on the first \$4,000, and 5% on the next \$3,000.

In the instance involved, the county millage is a countywide assessment, with \$294,215.20 being the total county taxes extended. The commissions of the tax assessor would be as follows:

\$4,000.00 at 10%	\$ 400.00
\$3,000.00 at 5%	\$ 150.00
\$287,215.20 at 2%	\$6,294.30
Total \$294,215.20	Total \$6,294.30

The plan suggested is to divide the total commissions by the total taxes to arrive at the commission rate or factor, which would be .02139. (The letter says the factor is .2139, but you will note this is an error.)

The plan then provides for paying out of the county funds handled by the county commissioners, commissions on the basis of the millage assessed for county purposes at the rate of .02139; and the commissions on the taxes assessed for road and bridge bond purposes handled by your Board in like manner.

It is my opinion that this is the legal and equitable method of handling this matter.

November 5, 1936.

BOARD OF ADMINISTRATION—PUTNAM COUNTY—RECEIPT OF BONDS DISTRIBUTED UNDER FUTCH BILL

Dear Sir:

This refers to your communication of October 28, 1936. I note therefrom that the Clerk of the Circuit Court of Putnam County, Florida, by letter dated June 24, 1936, transmitted to you \$15,000.00 of bonds issued by the Board of Public Instruction of Putnam County, Florida, for and on behalf of certain special tax school districts in said county, together with \$1560.00 of matured, and unpaid coupons appurtenant to such bonds, and together, also, with endorsement on certain of said bonds purporting to evidence \$420.00 interest accrued thereon after their

MISCELLANEOUS

maturity. The Clerk in question requested your receipt. It further appears that his letter to you disclosed that the bonds in question had been received by him, as such Clerk, in the redemption of delinquent county and district taxes for 1931 and prior years, under Chapter 16252, Laws of Florida, Acts of 1933, commonly known as the Futch Bill.

It further appears that you have been furnished with copy of a purported resolution adopted by the Board of County Commissioners of Putnam County, Florida, whereunder the Board of County Commissioners purport to direct and order the said Clerk to deliver school bonds as in said resolution indicated, to the taxing units and/or districts of Putnam County, Florida, as provided in said Futch Bill. This resolution discloses an attempt to make distribution as is provided in said bill. However, I note from your letter that the purposes for which the Clerk asks that you receive the bonds in question, do not correspond with the purposes for which they were distributed by said resolution of the County Commissioners. In such a situation, of course, the resolution of the County Commissioners, making the distribution in question, and not the letter of the Clerk, would control. It is certain, therefore, that you would be authorized, upon receiving them, only to credit them for the purposes for which they were ordered distributed, and that purpose you can determine only from the resolution making the distribution. I note also that the copy of the resolution in question does not purport to be a certified copy. If, however, it is a true and correct copy of the resolution in question, then you would be authorized to receipt for the bonds and coupons coming to you in the nature of delinquent tax collections under the Board of Administration act. It would not be necessary for you to receipt for any interest accrued after maturity, as your receipt could simply show that the bonds in question were received with endorsements thereon denoting, or purporting to denote, that certain interest thereon had accrued since the maturity thereof. With the above limitations, therefore, and in answer to your question as to whether it is your duty, as Treasurer of the Board of Administration, to accept and receipt for the bonds and coupons, and hold them for the benefit of the interest and sinking funds of the accounts stated in the Clerk's letter, I beg to advise that in my opinion, it is your duty, as such Treasurer, to accept and receipt for the securities in question, but that they should be held for the benefit of the interest and sinking funds of the accounts stated, not in the Clerk's letter, but in the resolution.

October 27, 1936.

BOARD OF ADMINISTRATION—BREVARD COUNTY—EXCHANGE
OF SECURITIES HELD IN INTEREST AND SINKING FUND

Dear Sir:

This refers to your favor of October 26, 1936, in which you request to be advised whether some method could be used whereby \$44,000.00

MISCELLANEOUS

of City of Eau Gallie bonds could be exchanged for \$44,000.00 of Town of Palm Bay bonds, held in an interest and sinking fund account, as an investment, by the Board of Administration. I previously advised you, under date of August 26, 1936, that the Board of Administration expressed a desire neither to submit itself to injunction proceedings nor to authorize the filing of bill in equity on its behalf, for the purpose of determining the propriety of a reinvestment of such sinking fund. I enclose a copy of that letter herewith.

Under date of August 29, 1936, I wrote you, in response to your letter of August 28th, and advised that I was of the opinion that there is no authority under the law, whereby the Board of Administration, except pursuant to authorization of a court, may legally exchange such bonds for other securities. I also enclose a copy of that letter.

In the case of *State ex rel. Pinellas County vs. Sholtz*, decided June 22, 1934, and reported in 115 Fla. 561, 155 So. 736, the Supreme Court of Florida pointed out that the proper course of procedure to be followed, in bringing about a judicial determination of the authority to make such an exchange as you suggest, is for the Board of Administration, by bill in equity filed by it, in its capacity of statutory trustee, to submit to the approval of a chancellor, the propriety of a desirable and authorized reinvestment of sinking funds in any new forms of securities. This action, as pointed out to you in my letter of August 20, 1936, the Board of Administration has not expressed a desire, and has not authorized this office, to take. You will, therefore, see that there is nothing which I can now do to be of assistance to you in this matter.

November 14, 1936.

BOARD OF ADMINISTRATION—MARION COUNTY—REESTABLISH-
MENT OF LOST OR DESTROYED TRUST RECEIPT

Dear Sir:

I have your letter of November 13, 1936, requesting my advice as to whether or not you may treat the certified copy of an order of the Circuit Court of Leon County, Florida, enclosed with your letter, as sufficient evidence of the reestablishment of the lost or destroyed trust receipt referred to and described in said order, and if thereupon, you will be authorized to act upon this court order just as if the original receipt had been surrendered to your office.

I have examined the order in question, which was entered in a proceeding to which you were a party, and am of the opinion that you will be protected in acting in accordance therewith, and that it may be treated by you precisely as if the original receipt had been presented to your office.

MISCELLANEOUS

November 18, 1936.

PROCEDURE IN MATTERS OF BOARD OF ADMINISTRATION

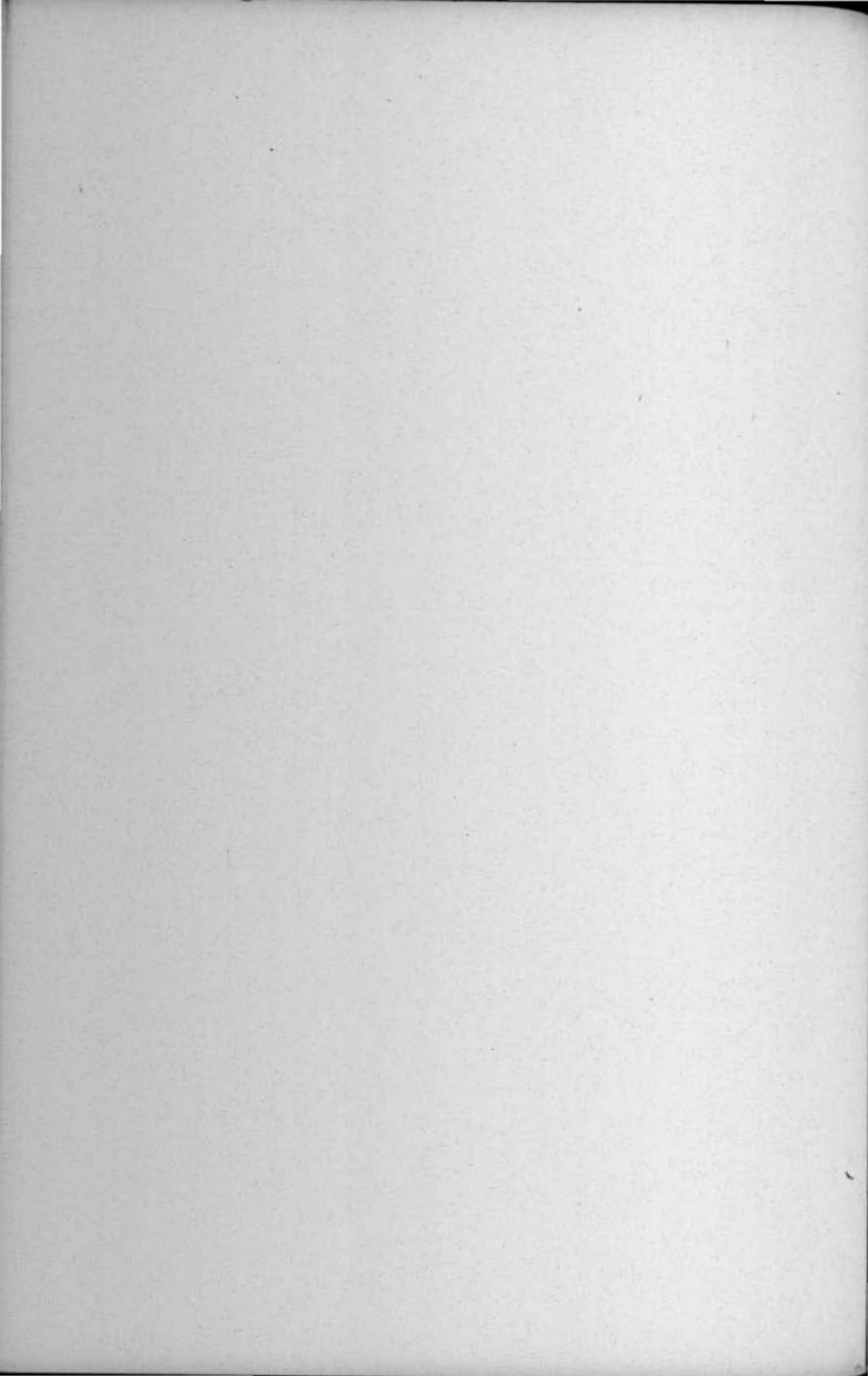
Dear Sir:

This refers to your recent communication concerning certain cases pending against the Board of Administration.

I do not know of any way by which that board could be required to pay over impounded moneys for any less than a settlement in full of the securities sued on. In other words, such board would not be authorized to "half-pay" a bond, thus leaving outstanding some unpaid portion thereof, as an entirely different form of obligation from the obligation originally issued.

However, in such matters, I do not attempt to pass on legal questions in advance. I am not a member of the Board of Administration, which is composed of the Governor, Treasurer, and Comptroller. The orderly course of procedure, in such matters, where settlement is advocated, is for the proper local authority to submit to the Board of Administration a duly certified copy of its resolution requesting the settlement, and outlining the terms thereof. The Board of Administration then takes the matter up and, if it concurs in the recommendation of the local authority, the settlement is approved, subject to my opinion as to the legality, and not the policy, of such action. You can well see that, with this the course of procedure, it would be premature for me to express any opinion as to the legality of a contemplated mode of settlement which might never be approved by the Board of Administration, as a matter of policy.

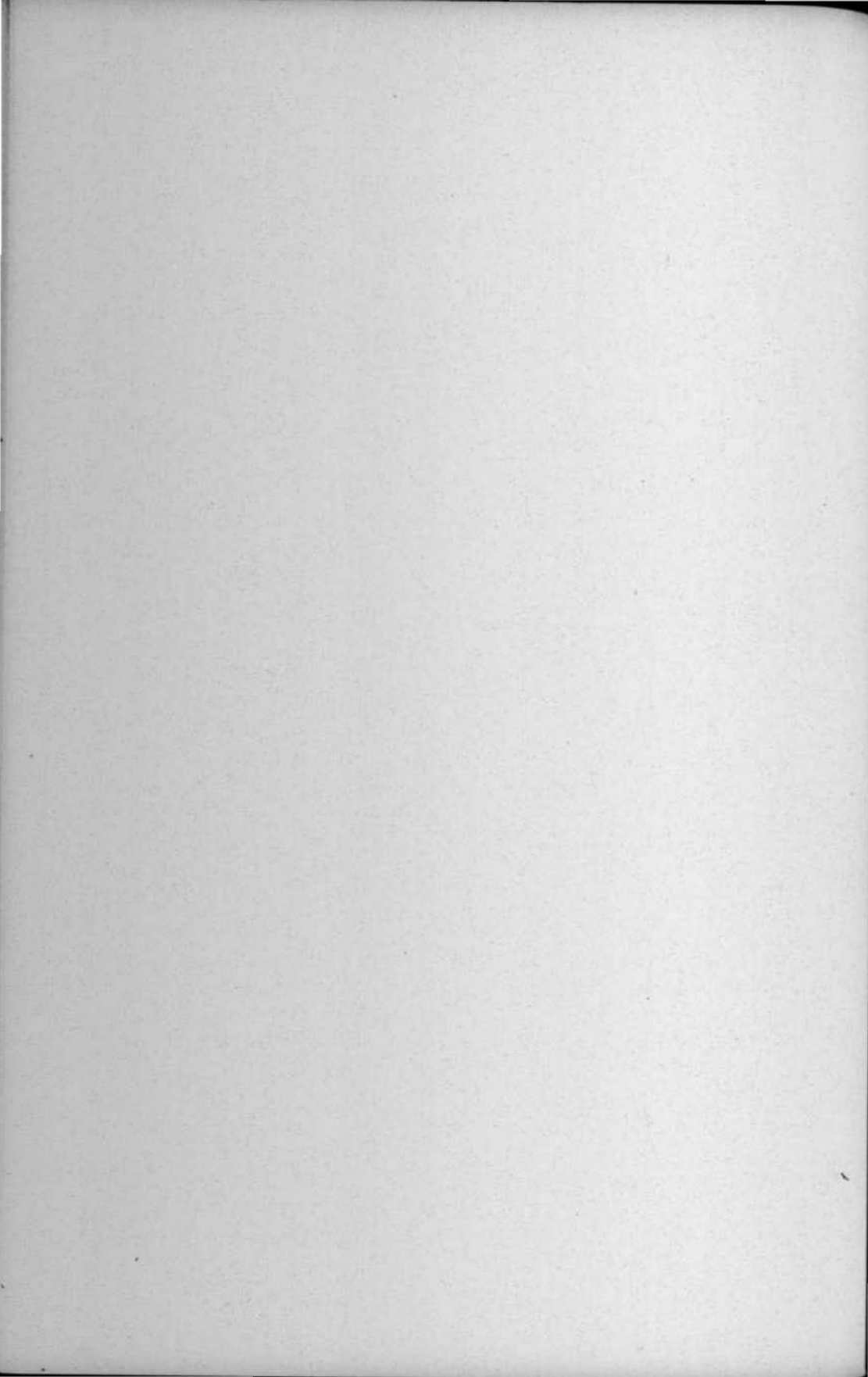
In connection with the case of *State ex rel. Houston v. Sholtz*, referred to in your letter, I found upon checking the files, that the amended alternative writ of mandamus had never issued. The court, the other day, issued the writ, as you have no doubt been advised; but I am now informed that this writ has been sent to you, so that I have been unable to procure a copy thereof. I shall, therefore, appreciate it greatly if I might receive two copies of this writ, in order that one may be sent to the Board of Administration, for its files, and that I may have one in my files. It is, of course, essential, where a suit is brought for impoundment, that we know exactly what the claim is before funds may be impounded and, to this end, I am particularly desirous of having a copy of this writ.



CHAPTER III.

COUNTY OFFICERS

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SECTION 1

COUNTY OFFICERS
IN GENERAL

April 29, 1936.

COUNTY OFFICERS—COUNTY SURVEYORS—ELECTION OF, IN
COUNTIES LACKING QUALIFIED LAND SURVEYORS*Dear Sir:*

You have requested my opinion upon the following question: May one, otherwise qualified, who is not a registered land surveyor, under the laws of the State of Florida, be elected as county surveyor in a county of the State of Florida, in which county there is no registered land surveyor?

Section 6 of Article VIII of the Constitution of the State of Florida, provides in part as follows:

"The legislature shall provide for the election, by the qualified electors in each county, of the following County officers:
* * * a County surveyor. The term of office of all County officers mentioned in this section shall be four years * * *. Their powers, duties and compensation shall be prescribed by law * * *".

Section 10 of Article XVIII of the Constitution provides for the first election of County surveyors.

Section 252 Compiled General Laws of Florida, 1927, provides for the election of a County surveyor, and reads in part, as follow:

"* * * A. * * * County surveyor shall be chosen for each county in this State, by its qualified electors at the general election A. D. 1928, and every four years thereafter* * *".

Sections 2416 and 2418, Compiled General Laws of Florida, 1927, provide for the bond which is required of County surveyors.

Section 2851 provides in general as to the duties of County surveyors, and Sections 2854 and 2855 provide for their compensation. Section 2852, Compiled General Laws, 1927, provides for the oath of a County officer. Chapter 15,993, Laws of Florida, Acts of 1933, provides for the qualifications of County surveyors in counties having a population of not less than 4125, and not more than 4370, according to the Federal Census last preceding May 3, 1933.

Chapter 15,657, Laws of Florida, Acts of 1931, provides for various qualifications as conditions precedent to the registration of land surveyors as defined in that statute. Section 9 of the chapter last referred

IN GENERAL

to expressly exempted from the provisions of said chapter, County surveyors theretofore duly elected and then holding office of County surveyor under the laws of Florida, such exemption to expire upon the expiration of such term of office. From the foregoing provisions, it appears that the Constitution of this State expressly provides that the Legislature shall provide for the election of a County surveyor for each of the counties of the State of Florida, and shall fix the powers, duties and compensation of such County surveyor; that the Legislature has so fixed the powers, duties and compensation of such County surveyors.

Your question makes it apparent that, if there is no qualified and registered land surveyor within the county in question, the purpose of the Constitution to provide for the election of a County surveyor, would be defeated if one not so registered as a land surveyor, could not qualify and be elected.

Therefore, in line with my opinion under date of November 30, 1932, I am of opinion that your question should be answered in the affirmative.

This opinion should not be construed as dealing with any question other than the express question stated above, and is not to be taken as indicating any opinion on my part, one way or another, as to the situation which would exist were there in the county in question, registered land surveyors.

July 17, 1935.

OFFICES—PERSON NOT TO HOLD TWO—POSITION AND OFFICE
DISTINGUISHED

Dear Sir:

Section 15 of Article 16 of the Constitution of Florida prohibits persons from holding or performing the functions of more than one office under the State Government at the same time.

Section 2155 of the Compiled General Laws provides for the employment of an attorney to prosecute criminal cases in the County Judge's Court. This is an employment as distinguished from an office and the Constitution does not prohibit an officer from accepting employment under said Act.

This is my comment on the matter stated in your letter of the 11th instant.

IN GENERAL

February 26, 1936.

OFFICERS—PROBATION OFFICERS—ABOLITION

Dear Sir:

I have your letter of the 24th instant enclosing copy of letter from Hon. _____, Attorney, Board of County Commissioners, Ft. Lauderdale, Florida, under date of the 19th instant, with reference to the Probation Officer of Broward County appointed under Section 3690, Compiled General Laws of Florida, 1927. It is stated that the County Commissioners would like for said office not to be filled for another term provided this can be effected by omitting the appointment of a successor to the present incumbent. Inquiry is made as to whether the present incumbent will continue in office after his term has expired in the event a successor is not named.

The pertinent part of Section 3690, Compiled General Laws of Florida, 1927, reads as follows:

"The Governor may, upon the request and recommendation of the board of county commissioners appoint at least one officer of either sex in each county, who shall be known as the probation officer of the county for which he or she is appointed. The term of the probation officer shall be four years from the date of appointment."

Article XVI, Section 14 of the State Constitution, reads as follows:

"All State, County and Municipal officers shall continue in office after the expiration of their official terms until their successors are duly qualified."

In 22 Ruling Case Law 581, Public Officers, 295, we find this language:

"An office created by the ordinance of a municipal corporation may also be abolished by ordinance."

In 22 Ruling Case Law 562, Public Officers, 266, the principle is announced that in the absence of constitutional or statutory provision as to the removal of public officers the power of removal is considered as incident to the power of appointment, and there is a citation to the case of *Ex parte Henen*, 13 Pet. 230, 10 U.S. L.Ed. 138. The 16th head-note in the case of *State ex rel. Landis v. Bird*, _____ Fla., _____, 163 Sou. 248, reads as follows:

"Office which law contemplates shall continue in existence as created until abolished remains in existence unless otherwise provided by law, even though beginning of cycle terms of office be changed and incumbent continues in office until after expiration of his term until new cycle term begins under amendment to law."

Under the provisions of Section 3690, Compiled General Laws, above quoted, it appears that the office of Probation Officer is provided for by the Legislature, but no appointment is authorized except upon the request and recommendation of the Board of County Commissioners. I do not think that a request and recommendation of the Board of County Commissioners for appointment of a Probation Officer and an appointment by the Governor under such request can have the effect of precluding the said Board from a consideration and determination of whether such office shall be continued and making appropriate request to the Governor in connection therewith. It seems to me that since the office is only created under the statute by action of the Board, such Board would have authority to reconsider the whole matter toward the close of any four year term and by proper resolution discontinue such office and request the Governor not to appoint a successor. The law appears to contemplate that the question of whether or not there shall be a Probation Officer for any County rests with the Board of County Commissioners of the County.

March 27, 1936.

OFFICERS—COMPENSATION WHEN HOLDING UNDER ART. XVI,
SEC. 14, STATE CONSTITUTION

Dear Sir:

I have your letter of the 24th instant enclosing copy of communication from County Attorney Calhoun County, Blountstown, Florida, with reference to fees in a Justice of the Peace Court presided over by a Justice of the Peace who appears to have been elected to that office in 1928 and qualified for same on January 8, 1929, but was not elected or qualified for the succeeding term beginning in January 1933. It appears that no other person was so elected or qualified. The correspondence shows that the Constable of said district was in the same position but has recently been appointed and commissioned as Constable.

Your attention is called to Article XVI, Section 14 of the State Constitution, reading as follows:

"All State, County and Municipal officers shall continue in office after the expiration of their official terms until their successors are duly qualified."

Your attention is further called to case of *Masters v. State*, ex rel. Bell, 100 Fla. 1660, 131 Sou. 773, and particularly the first headnote by the Court, reading as follows:

"A de jure officer, entitled under section 14 of article 10 of the Constitution to hold office after the expiration of his term until his successor has been duly qualified, and who con-

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tinues to perform the duties of the office ad interim, is entitled to the compensation of the office during such period. This rule applies even in cases where the period of holding over is prolonged by an election contest; at least, where no fraud or bad faith is charged or shown."

In view of the above it appears that said officers are entitled to proper compensation for their services as such officers.

October 11, 1935.

RECORDERS OF MARKS AND BRANDS—INSPECTORS REMOVAL

Dear Sir:

I acknowledge receipt of your memorandum under date of the 7th, requesting advice as to the Governor's authority in connection with the questions raised by the attached correspondence from Hon.———, Clerk of the Circuit Court, Sarasota, Florida, and resolution of the Board of County Commissioners of Sarasota County requesting the removal of ———— as Recorder of Marks and Brands of District Nos. 1, 3, 10 and 11, Sarasota County.

Chapter 14740, Acts of 1931, provides additional duties and powers of Inspectors or Recorders of Marks and Brands of live-stock and refers to the Inspectors of Marks and Brands, designating the offices of Recorder and Inspector as one and the same.

Section 6949, Compiled General Laws of Florida, provides that under certain conditions the County Commissioners of a county may divide the county into cattle districts and that upon recommendation of the County Commissioners, appointment may be made by the Governor of cattle inspectors who shall be "expert" in taking and recording marks and brands of cattle and that the term of office of the inspectors so appointed shall be for four years. From the correspondence above referred to, it is evident that——— holds appointment under the above stated provisions.

The power to appoint to office carries with it the power to remove or suspend for malfeasance, misfeasance or nonfeasance in office and it is my opinion that the Governor is vested with the power to suspend and remove——— when sufficient grounds are shown to exist for his suspension or removal.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
IN GENERAL

September 10, 1935.

FEES OF COUNTY OFFICERS IN CRIMINAL CASES PAYABLE FROM
FINE AND FORFEITURE FUND—TRANSFER OF FUNDS

Dear Sir:

Replying to your letter of the 7th inst., in which you ask the opinion of this office as to whether or not the Board of County Commissioners may pay the fees of the Sheriff, the compensation of the County Prosecutor, the feed and maintenance of prisoners in the county jail and the fees of the County Judge out of some other than the Fine and Forfeiture Fund, I beg to state that Section 2304, Compiled General Laws of Florida, makes a provision for the transfer of money from one county fund to another, with the approval of the State Comptroller, and makes it unlawful to pay from one fund the expenditures legally payable from another fund except where the procedure is followed as set forth in the quoted section.

February 2, 1935.

COUNTY OFFICERS—COMPENSATION FOR PARTIAL YEAR
WHERE OFFICE ABOLISHED

Dear Sir:

This is in response to your communication of December 14, 1934, which involved the following situation:

A county officer served one hundred and seventy-seven days of a full year term. Under the governing statute, he was entitled to a yearly compensation to the extent of all of the net income from his office, not to exceed \$5,000.00 per annum.

The State Auditor's report enclosed with your communication indicates that up to the time the office was abolished the net income had amounted to 2,535.12 and that if pro-rated on the basis of one hundred and seventy-seven days of the year, such officer would have been entitled to \$2,424.65, leaving an excess due the county of \$110.47.

It is my opinion that this method of computation is correct and the officer is entitled to compensation only on a pro-rata basis for the time served.

I realize the hardship which is worked in this particular instance, where, after being duly elected, with all the expenses incident thereto, for an expected four-year term, the officer serves but one hundred and seventy-seven days, but it is impossible for me, under the present law, to rule otherwise.

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I therefore answer your inquiry that the said \$110.47 is properly due the county as an excess.

Enclosed herewith are matters transmitted with your communication.

June 4, 1935.

PUBLIC OFFICERS—TERMS THEREOF—SECTION 3690, COMPILED
GENERAL LAWS OF 1927, REFERRING TO PROBATION
OFFICERS—CYCLES

Dear Sir:

This acknowledges your of May 24th, wherein you inquire whether or not the provisions of Section 3690, Compiled General Laws of 1927, in any manner detract from the decisions of the Supreme Court in the cases of *State vs. Amos*, 133 So. 623, and *State vs. Collins*, 101 Fla. 371, 134 So. 595.

The said Section provides as follows:

"The term of the probation officer shall be four years from the date of appointment."

It is my opinion that the words "from the date of appointment" merely refer to the date of the original appointment filling the office in the first instance, and that we must still adhere to the above decisions, cycle the office accordingly, and thereby arrive at the correct date for the expiration of the commission involved.

Under this rule the term of office of the present incumbent as shown by sheet attached to your communication, would expire at midnight November 13, 1935.

May 13, 1935.

COUNTY OFFICERS, COMMISSION BY GOVERNOR,
BOND TRUSTEES

Dear Sir:

Replying to your letter of the 13th instant, I beg to advise that Section 2 of Chapter 11259, Special Acts of 1925, provides for the filling of vacancies in the Board of Bond Trustees of Union County by the remaining members of said Board.

Section 7 of Article 8 of the Constitution of Florida provides that county officers shall before entering upon the duties of their respective offices be commissioned by the Governor.

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The Board of Bond Trustees of Union County is a County Board, and the officers thereof are county officers. They are therefore by the terms of the Constitution required to be commissioned by the Governor before entering upon their duties as Board members.

The selection of a member to fill a vacancy should be properly certified, and upon the selected member filing the proper oath of office and giving the required bond, he shall be commissioned as in the case of members elected to said Board, except that the Commission will recite his selection by the other members.

March 20, 1935.

UNION COUNTY—BOARD BOND TRUSTEES—FILLING VACANCY—
CHAPTER 11259, ACTS 1925.

Dear Sir:

This acknowledges receipt of your communication of March 19, 1935, enclosing letter from Clerk of the Circuit Court of Union County, Florida, wherein he advises that there has become a vacancy in the Board of Bond Trustees of Union County, Florida. He further advises that the remaining members of the Board of Bond Trustees have recommended a named individual to fill the vacancy and asked that you make the appointment.

You have requested my advise in the matter.

The Board of Bond Trustees of Union County, Florida, was created by Chapter 11259, Laws of Florida, Special Acts of 1925. Section 2 of said Act provides for the original appointment of the members of the Board by the Governor to hold office until the first Tuesday after the first Monday in January, A. D., 1929, and provides for the election by the qualified electors of Union County of their successors.

The said Section 2 provides in regard to vacancies as follows:

"Any vacancy occurring in said Board of Bond Trustees shall be filled by the remaining members of said Board, selecting some person who is a qualified elector and freeholder residing in said County and in the county commissioner's district in which the vacancy occurred."

I therefore find neither the necessity nor the authority in this statute for you to make such appointment. Of course, I express no opinion as to the constitutionality of said statute.

February 11, 1935.

COUNTY OFFICERS—REPORTS—CHAPTER 15608, ACTS 1931;
CHAPTER 14502, ACTS 1929

Dear Sir:

This acknowledges receipt of yours of the 2nd inst., to which is attached a Resolution of the Board of County Commissioners of Volusia County, to which in turn is attached copies of the reports of the Clerk of the Circuit Court, the Sheriff, the Tax Collector, the Tax Assessor, and the County Judge of said county.

The county involved is governed by Chapter 15608, Laws of Florida, Acts of 1931, which by its terms became effective January 1, 1933. This Act limits the compensation of the officers named to all of the net income from the office not to exceed \$5,000.00 per annum. The act further provides that at the end of each annual period a statement shall be rendered to the Board of County Commissioners, under oath, by each of the above named officers, showing the expenses, the fees and commissions, and gross and net income of their office, and that if the Board should be satisfied, upon examination of such report, that any official does not comply with the purposes and intent of said Act, it is the duty of the Board to send a copy of the said report to you, together with its objections thereto.

By Chapter 14502, Acts of 1929, it is made the duty of every county officer receiving compensation wholly or partly by fees or commissions, at the expiration of the semi-annual period to file with the Board of County Commissioners a sworn, itemized statement showing in detail the fees and commissions collected by him and source thereof, together with an itemized statement showing the expenses of such office, to whom compensation of any kind is paid, and the purposes thereof, the names of all clerks, deputies, etc., or other persons, firms, or corporations who are paid any moneys whatsoever out of the fees received from any source by said official, the amounts so paid and when, and the gross and net income of said office. By Section 2 of said Act it is the duty of the Board of County Commissioners to notify the Governor on the 15th day of January and July of each year if there has been a failure of any county official to comply with this Act; and it is further provided that any county official who has failed to comply with said Act by filing the detailed itemized report called for within fifteen days after expiration of this semi-annual period may be suspended by the Governor in his discretion.

In the first place we must be governed by both of these Acts and assume the same to be constitutional until a court of competent jurisdiction adjudges otherwise. I do not believe it was the intent of the Act of 1931 to in any manner limit the Act of 1929 and that it is necessary for these county officials to comply with both Acts.

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It is therefore my opinion that under these Acts you have the authority in your discretion to suspend the officers involved for failure to comply with the laws governing their reports.

It is my further my opinion that the County Commissioners should be advised to proceed at once to collect the moneys shown by said reports to be due on the basis of the compensation allowed by the said Act of 1931, by appropriate legal proceedings. I suggest that you request the Board of County Commissioners to advise you within twenty days what steps have been taken in this regard.

Trusting this answers your inquiry and enclosing herewith matters enclosed in yours of the 2nd, I am,

January 29, 1935.

COUNTY OFFICERS—SUPERINTENDENT OF PUBLIC INSTRUCTION—AUTHORITY OF GOVERNOR TO GRANT LEAVE OF ABSENCE AND APPOINT ACTING SUPERINTENDENT

Dear Sir:

This is in response to your communication of the 24th instant, wherein you enclose correspondence including a petition signed by two members of the county board of public instruction, requesting that the county superintendent of public instruction be granted an indefinite leave of absence from his office because of illness; and you inquire as to your authority to grant such leave of absence and appoint an acting county superintendent with authority to sign papers or documents which require the signature of such county superintendent, and in general carry out his duties.

It is my opinion that there is no such authority vested in you, and the laws do not provide for a contingency of this sort, with power in you to grant the request.

May 21st., 1935.

OFFICERS. SUSPENSION, COMPENSATION WHEN RESTORED

Dear Sir:

Replying to your inquiry of this date, permit me to say that Section 15 of Article IV of the Constitution of Florida contains the following provision:

"No officer suspended who shall under this Section resume the duties of his office, shall suffer any loss of salary or other compensation in consequence of such suspension".

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If Mr. _____ formerly Constable of the 6th. Justice of Peace District of Dade County, Florida was suspended from office and later restored to office by the Governor, he is under the law entitled to the compensation of the office for the period of time that he was under suspension.

April 24, 1935.

COUNTY FINANCES—HOW FUNDS DRAWN FROM DEPOSITORIES

Dear Sir:

I am in receipt of your letter of the 20th instant, referring to Section 2409, Compiled General Laws of Florida, 1927, relating to how funds shall be drawn from County depositories and containing the following language:

"And the bank upon which each check or warrant or warrants is drawn shall not pay same until it shall receive a certified list from Secretary or Clerk of board issuing check or warrant or warrants giving date and number and amount of each check, or warrant or warrants and person to whom issued."

You further state that the First National Bank in Milton, the designated depository for the Board of Public Instruction, states that it will no longer pay warrants drawn by said Board until it has been furnished with the certified list, above referred to.

In reply to your inquiry you will note that the language above quoted is a direct prohibition against a bank acting as a depository making payment of warrants until such list is furnished and, in my opinion, the bank is well within its right in requiring such list before making such payments.

March 8, 1935.

COUNTY ATTORNEY, EXPENSES

Dear Sir:

In your letter of the 6th instant, you request my opinion as to whether your actual travelling expenses and those of your associates in coming to Tallahassee to argue the appeal to the Supreme Court from the decree of the Circuit Court validating Sarasota County's re-funding bonds, are proper charges to be paid by the County Commissioners of your county.

As to the matter of your expenses incident to your official connection with the case, I call your attention to the case of State ex

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rel Parker vs. Lee, 151 So. 491, in which the Court held that any expenses incurred by State Attorneys in the performance of the duties imposed on them by law outside of the county of their residence, may be paid under Chapter 15858, Acts of 1933, so long as such expenses are within the terms of Chapter 16184, Acts of 1933.

In view of the fact that the services in this particular instance were rendered to the county, and because of the fact that the law makes it your duty to represent the county in validation proceedings, I think your actual expenses a proper charge to be paid by the county.

With reference to the expenses of your associates, this in my opinion is a matter of contract between such attorneys and the county.

January 4, 1935.

SALARIES—FEES IN CRIMINAL CASES

Dear Sir:

I am in receipt of your letter of the 29th ultimo, with reference to fees in criminal cases in the Court of the Committing Magistrate where no indictment or information is filed. You refer to Sections 8488 and 8490, Compiled General Laws of Florida, 1927. You also state that the fees you have in mind relate particularly to the theft of about 20 tons of railroad iron.

Under the rulings of our Supreme Court in the case of Simmons vs. State, 71 Fla. 340, 71 So. 278, and particularly the case of Osceola County vs. State ex rel. Newton, _____ Fla. _____, 155 So. 119, it appears that the County Judge was not authorized to require payment in advance or security for costs in the particular instance to which you refer. Under the provisions of Sections 8488 and 2833, Compiled General Laws of Florida, 1927, it is provided that when a Committing Magistrate holds to bail or commits a person to answer to a criminal charge and an information is not filed or an indictment found against such person, the costs and fees of such committing trial shall not be paid by the County except the costs of executing the warrant. Under these statutes, as well as the rule of our Supreme Court in 155 So. 119, above referred to, it appears that the costs of the Sheriff are proper to be paid. However, under said statutes and under the ruling of our Supreme Court in the case of Barrow, et al., vs. State, 77 Fla. 773, 82 So. 293, it does not appear that the County is liable for other costs in said instance mentioned by you.

Your attention is further called to Section 2837, Compiled General Laws of Florida, 1927, providing for officers to test the validity of any bill or charge rejected by the County Commissioners.

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January 10, 1935.

SALARIES:—FEES IN CRIMINAL CASES

Dear Sir:

I am in receipt of your letter of the Seventh instant, with further reference to your letter of the Twenty-ninth ultimo, and my answer thereto on the Fourth instant. Your letter refers particularly to the payment of witnesses before a committing magistrate in a case in which the grand jury failed to find an indictment.

I stated in my last letter that the cost of the Sheriff were proper to be paid, but that it did not appear that the county was liable for other costs in said case. I may say that part of the reasoning of the Supreme Court with reference to payment of the Constable for service of warrant in such cases as reported in the case of *Osceola County vs. State ex rel Newton* ——— Fla. ———, 155 So. 119, might seem to be applicable to witnesses in such cases, but I do not find any specific holding of our courts to the effect that witnesses in such cases may be paid. Neither do I find any statute authorizing payment of witnesses in such cases.

In this communication your attention is called to Section 7465, Compiled General Laws of Florida, 1927, which provides among other things that each member of the Board of County Commissioners voting to pay any claim against the county not authorized by law, shall be guilty of malfeasance, etc. See also Section 7466 of the same compilation which provides that any Clerk of the Circuit Court who shall sign any warrant to pay any claim against the county not authorized by law, shall be personally liable for such amount and shall be guilty of a misdemeanor, etc.

Under these circumstances I think the County Commissioners may properly refuse to pay witness fees in such a case as you referred to until a statute authorizing such payment has been enacted or until the Supreme Court shall definitely determine that fees of witnesses in such cases should be paid under existing statutes.

May 21, 1935.

COUNTY ATTORNEY, EMPLOYMENT AND COMPENSATION

Dear Sir:

Section 5 of Chapter 16344, Laws of Florida, Acts of 1933, authorizes the Board of County Commissioners to employ an attorney in connection with the bridge project authorized by said Act, and since the law does not fix the amount of compensation which may be paid to such attorney nor the manner of payment, these are matters left to the sound discretion of the Board.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
IN GENERAL

February 7, 1935.

SALARIES—EXPENSES OF CLERK AND SHERIFF—PAYMENT TO
ATTORNEYS FOR LEGAL ADVICE

Dear Sir:

I have your letter of the 4th instant, answering my letter of the 30th ultimo, with reference to letter from Hon. ———, Chairman Board of County Commissioners, under date of Jan. 25, making inquiry if the Clerk of the Circuit and the Sheriff are authorized to charge and show in their reports under "Expenses of Office" amounts paid to attorneys for legal advice.

In reply your attention is called to Section 2866, Compiled General Laws of Florida, 1927, defining the term "net income" as related to compensation of County Officials, reading as follows:

"The term "net income" as provided by this law shall mean the residue of the income from such office after deducting all reasonable expenditure for the salaries of clerks and assistants and the necessary expenditures for the proper operation of said office."

On April 14, 1930, Hon. Fred H. Davis, Attorney General, now one of the Justices of our Supreme Court, wrote an opinion found on pages 316 and 317 of the Attorney General's Report for 1929-1930, in which he held that under the above quoted Section County Officers, such as a Sheriff or Clerk of the Circuit Court, have a legal right to employ or retain an attorney at law and pay such attorney out of the fees of his office as a legitimate expense thereof.

I beg to say I concur in said opinion where such employment is necessary and the amounts paid therefor are reasonable expenditures.

In cases where the Clerk of the Circuit Court is only a nominal party to a suit against the County in which the County Commissioners have an attorney to represent the County, it seems to me such attorney should also represent the Clerk of the Circuit Court as a nominal party and that the employment of additional counsel by the Clerk of the Circuit Court would not be necessary. No specific inquiry was made by you or Mr. ——— with reference to such cases, but if such a situation should arise you will know my views in the matter.

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March 6, 1935.

SALARIES—PROSECUTING ATTORNEY—COMPENSATION—
BOND ESTREATURES*Dear Sir:*

I am in receipt of your letter of the first instant in which you state that the Prosecuting Attorney in the County Court of Lee County, Florida, is entitled to \$5.00 as a fee in each conviction. You make inquiry if he is entitled to the same fee for estreature of appearance bond.

Section 8280, Compiled General Laws of Florida, 1927, which is the general statute with reference to compensation of County Attorneys reads as follows:

"He shall be paid \$400.00 per annum and \$5.00 for each conviction."

Under the above quoted statute it appears that the salary of \$400.00 per annum paid to a County Attorney is to cover the general duties required to be performed by him under Section 8282, Compiled General Laws of Florida, 1927, which would seem to include the estreature of appearance bonds.

Your attention is further called to Section 7465, Compiled General Laws of Florida, 1927, penalizing any member of the Board of County Commissioners voting to pay any claim against the County not authorized by law.

In my opinion the general law does not authorize a specific fee for estreature of bonds and the Prosecuting Attorney would not be authorized to charge a fee of \$5.00 for such services.

September 7, 1935.

ACCOUNTANTS—AUTHORITY OF COUNTY COMMISSIONERS TO
EMPLOY ACCOUNTANTS TO AUDIT BOOKS OF
COUNTY FEE OFFICERS*Dear Sir:*

This is in response to your inquiry of September 4th, wherein you ask whether or not a Board of County Commissioners has authority to engage public accountants to make audits of the accounts of the fee officers of the county and pay for such services from the general fund of the county.

An examination of the statutes with reference to the powers of the Board of County Commissioners fails to disclose express statutory au-

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thority. Section 2196 C. G. L., 1927, with reference to the duty of the County Commissioners to inspect the offices and records of the County officers, certainly does not expressly or impliedly authorize an audit of such officers' accounts at county expense.

Sections 229 to 237 inclusive, C. G. L., 1927, clearly contemplate a centralized State Auditing Department, maintained at State expense, competent and adequate to do all the auditing that is necessary. Should I hold otherwise, the State Auditing Department would become nothing more than the facility for rechecking audits already made. The Legislature could not have intended such result.

We must presume, also, that the County officers are competent to keep the necessary books and records as required by law or by ruling of the proper administrative department, and that if so kept, the audit by the State Auditing Department is all that is necessary to protect the interests of the public.

I call your attention to Chapter 14484, Laws of Florida, Acts of 1929, with reference to counties of not more than 115,000 nor less than 110,000 population having detailed to them an Assistant State Auditor for continuous service therein, the compensation of such auditor to be paid by the Board of County Commissioners to the State Comptroller as reimbursement for such services. Otherwise, there is no statutory law authorizing any procedure of this character.

I refer you to my prior opinions under date of March 22, 1932, April 16, 1932, and August 31, 1932, holding that the fee officer himself has no authority to pay for an audit of his books, and that an item therefor should not be allowed as a credit to such officer.

I therefore answer your question in the negative.

October 15, 1936.

OFFICERS—TERM OF APPOINTIVE OFFICER

Dear Sir:

I am in receipt of your letter of the 14th instant in which you make inquiry as to whether voters may write a name in on a ballot to fill a vacancy in an unexpired term of a County official who has been removed from office a short time prior to the general election without a successor having been appointed by the Governor.

In reply I beg to say that I do not think the same could be done unless the County Commissioners make provision for the election of a successor for the unexpired term. See Advisory Opinion to the Governor 92 Fla. 989, 111 So. 252.

You make further inquiry whether an appointment made today to a County office will hold good for the balance of the unexpired term.

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In reply your attention is called to the following provisions of the State Constitution:

"When any office, from any cause, shall become vacant, and no mode is provided by this Constitution or by the laws of the State for filling such vacancy, the Governor shall have the power to fill such vacancy by granting a commission for the unexpired term."

Section 7, Article IV.

"The term of office for all appointees to fill vacancies in any of the elective offices under this Constitution, shall extend only to the election and qualification of a successor at the ensuing general election."

Section 6, Article XVIII.

"In all cases of elections to fill vacancies in office such election shall be for the unexpired term."

Section 7, Article XVIII.

"A general election shall be held in each county in this State on the first Tuesday after the first Monday in November, A. D. 1898, and every two years thereafter, for all elective State and county officers whose terms of office are about to expire, or for any elective office that shall have become vacant."

Section 9, Article XVIII.

Both of your inquiries appear to be covered by Advisory Opinions to the Governor in 72 Fla. 422, 73 So. 742, and 92 Fla. 989, 111 So. 252. I quote you as follows the headnote in the first above mentioned Opinion:

"Under the provisions of sections 7 and 9 and 14 of article 18 of our Constitution, successors to all elective county officers whose terms of office would have expired on the first Tuesday after the first Monday in January, 1917, but whose office had become vacant by the incumbent's death, resignation, or otherwise, and such vacancy filled by executive appointment prior to the general election held on the 7th day of November, 1916, must continue to discharge the duties and receive the emoluments of such offices until the expiration of the term in which the vacancy occurred; no election having been called and held to fill the unexpired term intervening the date of the general election and the date when the next term begins."

72 Fla. 422, 73 So. 742.

I also quote you the 4th and 5th headnotes in the last above mentioned Opinion, as follows:

4. "The tax collector of Manatee County, elected and commissioned for the term ending in January 1929, died 13 days before

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the general election held November 2, 1926. An appointment was at once made to fill the vacancy till the next general election. Under this state of facts the county commissioners of Manatee county were authorized under section 9 of article 18b of the Constitution to make provision for the election of a tax collector at the general election held November 2, 1926, to fill out the unexpired term."

5. "When it appears that an election was duly provided for and was legally held throughout the county under circumstances as outlined in the previous headnote, it becomes the duty of the Governor under section 7 of article 18 of the Constitution to commission the one receiving the highest number of votes cast for the office voted for at said election."

92 Fla. 989, 111 So. 252.

From the foregoing it appears that the County Commissioners may make provision at the next general election for the election of a person to fill the vacancy and that the person elected may qualify immediately for the unexpired term. If no such provision is made by the County Commissioners and no person is elected and qualified for the unexpired term, the one elected for the next regular term beginning on Tuesday after the first Monday in January, 1937, would not take office until such time but your appointee under such circumstances would continue to the end of the present unexpired term.

December 3, 1936.

OFFICERS, COUNTY—TERMS OF OFFICE—APPOINTMENTS

Dear Sir:

I am in receipt of your letter of the 28th ultimo enclosing copy of a letter from Mr. _____ of Sarasota with reference to his election as Prosecuting Attorney for Sarasota County. The particular question raised appears to be as to whether Mr. _____ by virtue of his election to the new term of office beginning January 5, 1937, is entitled to the office for the remainder of the present term ending on January 5 when some months ago you made an appointment to such office on account of the death of the regular officer holding such position.

In reply your attention is called to Advisory Opinion to the Governor appearing in 72 Fla. 422, 73 So. 742, and I quote you the last two paragraphs of the body of the opinion in said case:

"We are of the opinion that under the provisions of sections 7 and 9 and 14 of article 18 of our Constitution successors to all elective county officers whose terms of office would have expired

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on the first Tuesday after the first Monday in January, 1917, but whose office had become vacant by the incumbent's death, resignation or otherwise, and such vacancy filled by executive appointment prior to the general election held on the 7th day of November, 1916, must continue to discharge the duties and receive the emoluments of such offices until the expiration of the term in which the vacancy occurred, no election having been called and held to fill the unexpired term intervening the date of the general election and the date when the next term begins.

"The persons elected at such general election for the full term that commences on the first Tuesday after the first Monday in January next after their election cannot fill the office for the unexpired part of the last preceding term in which the vacancy occurred unless he can do so by an appointment to fill such vacancy by the chief executive. He cannot do so by virtue of his election to the office for a term that under the provisions of section 14 of article 18 commences only when the last preceding term comes to an end."

From the above it will be seen that unless Mr. _____ was elected for the unexpired term, as well as the next regular term beginning January 5, 1937, he would not be entitled by virtue of an election to the next regular term to fill the office for the unexpired term.

December 21, 1936.

SALARY SUPERVISOR OF REGISTRATION

Dear Sir:

Replying to your favor of December 17th., in which you ask to be advised whether or not Chapter 17,220, Laws of Florida, Acts of 1935, repeals all of Chapter 15,629, Laws of Florida, Acts of 1931, permit me to say, the Chapter first above named does not contain a repealing clause. Section 3 of said Chapter reads as follows, to-wit:

"SECTION 3. That this Act shall be in addition to all laws now in force and applying to the duties of the registration officer, and the registration of electors in said counties not in direct conflict herewith".

The only conflict that we find between the Act of 1931 and the Act of 1935 is the provision in Chapter 17220, Acts of 1935, which provides that the compensation to be paid to the Supervisor of Registration in counties having a population of not less than 55,000 and not more than 75,000 people according to the State census of 1935 in lieu of all other compensation now allowed by law for his services as such Supervisor of Registration shall be the sum of \$3,600.00 per annum, payable in equal monthly payments of \$300.00 each, whereas the Act of 1931

IN GENERAL

provides that the compensation to be paid the Supervisor of Registration in counties having a population of not less than 55,000 and not more than 70,000, according to the last preceding State or Federal census, in lieu of all other compensation now allowed by law for his services as such, shall be the sum of \$2,400.00 per annum, payable in equal monthly payments of \$200.00 each.

The salary provision in Chapter 17220, Acts of 1935 is in direct conflict with the salary provision in Chapter 15629, Acts of 1931 and, therefore, this particular provision of the 1935 Act can not be held to be in addition or supplemental to any valid subsisting statute enacted prior to the Acts of 1935.

December 31, 1936.

COUNTY SURVEYORS—ISSUANCE OF COMMISSION

Dear Sir:

In your letter of December 29, 1936, you state that Mr. _____ was, at the last general election, elected to the office of county surveyor for Volusia County; that he has met all of the requirements of the law relative to furnishing bond and payment of fees and in general, all of those requirements which the law mandatorily requires to be satisfied before a commission is issued to hold such office. However, you further state that it has been suggested to you that this gentleman does not possess one of the personal qualifications required of a county surveyor, in that it is suggested he has not complied with the provisions of Chapter 15657, Acts of Florida, 1931, (Sec. 4151) 96 et seq., C. G. L. 1927, Perm. Supp.) and that he is not exempted from such compliance by the provisions of said chapter.

Under such circumstances, you ask that I advise whether you are under any duty to make a preliminary inquiry and determination of the question as to whether, if the commission is issued, he will be qualified to hold the office.

I find no provision in the law specifically requiring you to make such inquiry into the personal qualifications of those elected to office, nor do I believe that any such duty is, by reasonable inference, to be implied from existing provisions of the law. This seems to me to follow, because it would be an almost endless task for you to make inquiry into the personal qualifications of everyone elected to office, before a commission could issue on every occasion that it might be suggested to you that there was some personal disqualification. Our law provides a method for the determination of such questions after an adjudication by a court of competent jurisdiction, in proceedings in which the person sought to be disqualified has the right to appear and be heard. See *State ex rel., Landis v. Ward*, 158 So. 273. From that case

IN GENERAL

it would appear that if the suggestion made to you is correct, proceedings in quo warranto might be taken after the commission issued, to oust this gentleman, but such ouster would only be had after a full investigation and hearing of the matters touching his personal qualifications. These personal qualifications, it seems to me, are not required by law to be inquired into by you. I am, therefore, of opinion that under the circumstances disclosed, the commission should be issued, and any question of personal eligibility to hold the office should be settled by proper judicial proceedings.

SECTION 2

BUDGET COMMISSION

March 20, 1936.

COUNTY SUPPLEMENTAL BUDGETS—WHEN CAN BE MADE

Dear Sir:

With your letter of the 5th instant you submit certified copies of Resolution of the Hillsborough County Budget Commission dated February 19, 1936, which undertakes to approve and ratify, so far as the said Budget Commission has the power, expenditures in connection with the operations of the sheriff's office of Hillsborough County during the calendar year 1935.

In my letter to you dated May 24, 1934, I expressed the opinion that the Budget Commission of Orange County under Section 9 of Chapter 15938, Acts of 1933, had the authority to file a supplemental budget making such allowances as the Budget Commission found necessary to take care of all unexpected and unforeseen items of expense incident to and reasonable and proper in the operations of the government of the county.

Section 9 of Chapter 15938, Acts of 1933, is practically the same as Section 9 of Chapter 14678, Acts of 1931, the latter being the statute under which the Budget Commission of Hillsborough County operates. My holding with reference to the power of the Budget Commission of Hillsborough County to make and file supplemental budgets under Chapter 14678, is the same as expressed in my letter of May 24, 1934, above referred to, published at pages 202, 203, and 204 of the Biennial Report of the Attorney General of Florida 1933-34.

Such supplemental budgets to be legal must be made for and during the fiscal year for which the main budget was made, and during which the extra or unforeseen expenditures are to be made.

February 26, 1935.

COUNTY FINANCES—DUVAL COUNTY WELFARE BOARD—
BUDGET—SUPPLEMENTAL*Dear Sir:*

I am in receipt of your letter of the 21st instant with reference to the budget of the Duval County Welfare Board. You state at the beginning of the present fiscal year on October 1, 1934, the Duval County Welfare Board had an excess unexpended revenue of \$19,841.94. You indicate that this excess was due to unanticipated receipts.

You state that you now desire to budget and expend with the approval of the County Budget Commission the said \$19,841.94 in the

BUDGET COMMISSION

manner and for the facilities and purposes approved by your County Budget Commission.

I gather from your letter that you desire a supplemental budget for the current fiscal year to embrace the above amount to be expended during the present budget year.

Under Section 9 of Chapter 14,678, Acts of 1931, the Budget Act governing Duval County, you will not the following language:

"Every such budget so adopted by the County Budget Commission for each such board shall be final and shall have the force and effect of fixed appropriations determined by the authority of law which shall not be altered, amended or exceeded in whole or in part by any such board or officer or member thereof. It shall be unlawful for any such board or any member or officer thereof to expend or to contract for the expenditure for any purpose during the ensuing fiscal year of more than ninety-five per cent (95%) of the total amount appropriated for such purpose in and by the budget finally prepared and certified to such board by the County Budget Commission * * *."

It seems to me that Section 9 of Chapter 14,678 is the controlling provision and I find nothing in said Section, or any other Section, which prohibits the filing of a supplemental budget at any time when necessity may demand. The Act does not say that it shall be a final and fixed appropriation in the manner and sense that the County Budget Commission itself may not alter, amend or change the budget. It, therefore, appears to me that the making of the budget a final and fixed appropriation is only final and fixed *as against the officer or board or member who expends the money.*

In conclusion I beg to say it is my opinion that under the law heretofore referred to the Duval County Budget Commission has the authority to file a supplemental budget, making such allowances to the Duval County Welfare Board as the Budget Commission finds necessary and proper for the expenditure of the above mentioned sum existing by virtue of unanticipated receipts.

November 16, 1935.

COUNTY BUDGET COMMISSION—APPROVAL OF COMPTROLLER
TO TRANSFER FUNDS—CHAPTER 15938, ACTS OF 1933
(AMENDED CHAPTER 16883, ACTS OF 1935)

Dear Sir:

This acknowledges receipt of yours of November 8th, wherein you advise that you are in receipt of a resolution from the Board of County Commissioners of Orange County, seeking your approval to

BUDGET COMMISSION

a transfer of \$10,000.00 from the New Court House Interest and Sinking Fund and \$2,000.00 from the Court House Site Fund to the County Road and Bridge Fund. The County Commissioners are evidently relying upon Section 16 of the above mentioned Act of 1933. You also advise that the County Budget Commission has given its approval to the transfer.

You ask whether or not moneys in the Sinking Fund for outstanding bonds may be so transferred.

It is my opinion that such transfer may not be made. The moneys in the Interest and Sinking Fund account for the Court House bonds are moneys resulting from tax levies solely for that purpose, and are held in trust to be used for no other purpose except that for which they were raised.

July 26, 1935.

BUDGET COMMISSION OF PALM BEACH COUNTY CEASES TO
EXIST—CHAPTER 15,938, ACTS OF 1933

Dear Sir:

In your letter of the 25th inst., you request my opinion as to whether the Budget Commission of Palm Beach County loses its existence because of the change of population of that County since the enactment of Chapter 15, 938, Laws of Florida, Acts of 1933.

The Act referred to created a Budget Commission in the several Counties having a population of not less than 43,000 and not more than 53,000 according to the last preceding State or Federal Census. The last official census preceding the enactment of Chapter 15,938 was the Federal Census of 1930 which shows the population of Palm Beach County to be, at that time, 51,784. The State Census of 1935 gave Palm Beach County 53,194, which takes that County out of the classification made by Chapter 15,938.

The Act, therefore, is not now applicable to Palm Beach County because of the change of population as shown by the 1935 State Census and it follows that the Budget Commission for Palm Beach County ceases to exist.

April 25, 1935.

COUNTY FINANCES—BUDGETS—JUSTICES OF THE PEACE

Dear Sir:

I am in receipt of your letter of the 23rd instant, advising that the amount budgeted in your county for Justices of the Peace is prac-

BUDGET COMMISSION

tically exhausted and making inquiry how further bills for services of Justices of the Peace may be paid prior to the next fiscal year.

In reply your attention is called to the general budget statutes, Sections 2302 to 2308, Compiled General Laws of Florida, 1927. Your attention is particularly called to Sections 2303 and 2306. Section 2306 you will note was amended by Chapter 16,266, Acts of 1933.

Under the general budget statutes, above mentioned, the estimates finally adopted by the Board of County Commissioners have the force and effect of fixed appropriations and it is specifically provided that the same shall not be altered, amended or exceeded. You will note, however, under Section 2306, as amended, provision is made for transfer of items of expenditure to another item of expenditure upon resolution adopted by the Board of County Commissioners when approved by the Comptroller of the State and also by the Budget Commission in counties having such a Commission. You will note also that provision is made for reserving in the estimates a reasonable sum for contingencies and emergencies, and the appropriation of any part of said sum so reserved for any expense of the county authorized by law.

SECTION 3

COUNTY COMMISSIONERS

September 5, 1935.

COUNTY COMMISSIONERS—NO AUTHORITY TO EMPLOY COR-
RESPONDING SECRETARY FOR COUNTY ADVERTISING
PURPOSES

Dear Sir:

Answering your inquiry under date of September fourth, I beg to state that in my opinion your advice to the Board of County Commissioners of Gulf County, Florida, to the effect that there is no law in this State authorizing the employment by said Board of a corresponding secretary for the purpose of advertising the resources, attractions and advantages of the county, is correct.

While, no doubt, the county would be greatly benefited by such action, still the Board would have to look to the law as it is and not as the Board would desire it to be for its authority to expend public funds.

August 2nd, 1935.

OFFICERS—COUNTY COMMISSIONERS—EMPLOYMENT IN
OTHER WORK

Dear Sir:

I have your letter of the 29th ultimo advising that you are a County Commissioner and making inquiry if you would have to resign to accept a position as Fruit Inspector in the Department of Agriculture.

Article XVI, Section 15, of the State Constitution, provides that no person shall hold or perform the functions of more than one office under the government of this State at the same time. The position of Fruit Inspector does not appear to be an office and there will be no violation of the above mentioned provision of the State Constitution by a County Commissioner being employed as a Fruit Inspector. Neither do I know of any statutory prohibition against you continuing as County Commissioner and accepting employment as a Fruit Inspector.

Your attention, however, is called to certain other provisions of the State Constitution as follows:

Article XVI, Section 17, provides that no person shall hold any office of trust or profit under the laws of this State without devoting his personal attention to the duties of the same.

Article XVI, Section 16, provides for deductions from the salaries of public officers who neglect the performance of any duty assigned them by law.

COUNTY COMMISSIONERS

Article IV, Section 15, provides all officers that shall have been appointed or elected and are not liable to impeachment may be suspended from office by the Governor for malfeasance or misfeasance or *neglect of duty in office*.

July 16, 1935.

OFFICERS—COUNTY COMMISSIONERS—PURCHASE OF SUPPLIES
IN WHICH A COMMISSIONER IS INTERESTED

Dear Sir:

I have your letter of the 13th instant stating that you are a member of the Board of County Commissioners of DeSoto County; that you conduct a school of printing for The Baptist Children's Home, Arcadia, Florida, and that printing is done there for the Home as well as for any one else who desires printed matter. You make inquiry if you would be violating the law if you should do some printing for the County of DeSoto.

In reply your attention is called to Sections 7471 and 7472, Compiled General Laws of Florida (1927). You will note that Section 7472 provides that no State or County Board shall purchase supplies, goods or materials for public use from any firm or corporation in which any member of such Board is either directly or indirectly interested.

Under the provisions of said statute it appears that your Board would not be authorized to purchase and pay for printing material of the above mentioned firm from which you state in your letter you receive a commission on all work turned out.

January 8, 1936.

HEALTH—TUBERCULOSIS SANITARIUMS—COUNTY COMMISSIONERS MAY CONTRACT FOR BEDS

Dear Sir:

This is in reply to your letter of January 3, enclosing brief in support of the proposition that the several counties of the State of Florida may enter into contracts providing for the use of beds in tuberculosis sanitariums operated by the State Tuberculosis Board.

It is my opinion that the respective Boards of County Commissioners of the counties of the State of Florida do have the power and authority to enter into such contracts. My opinion is based upon the provisions of Article 13, Section 3, of the Constitution of Florida, Section 3313, Compiled General Laws of Florida, and Chapter 17469, Laws of Florida, Acts of 1935.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
COUNTY COMMISSIONERS

June 3, 1935.

REPAYMENT OF MONEY TRANSFERRED FROM ONE FUND TO
ANOTHER BY BOARD OF COUNTY COMMISSIONERS

Dear Sir:

I have your letter in which you state that the Board of County Commissioners of Escambia County made a temporary transfer of \$2,000.00 under Section 2304, Compiled General Laws of Florida, 1927, from the General Revenue Fund of the County to the Lillian Bridge Bond Fund. You request my opinion as to whether or not the Board may now repay the General Revenue Fund by transferring \$2,000.00 thereto from the Lillian Bridge Bond Fund.

Section 2304, *supra*, contemplates that money transferred from one fund to another will ultimately be repaid. Such transfers are of a temporary nature.

It is my opinion that the transfer of \$2,000.00 from the Lillian Bridge Bond Fund to the General Revenue Fund to repay the latter fund may be made by the adoption of the proper resolution by the Board of County Commissioners of Escambia County and the approval of the resolution by the County Budget Commission and by you as Comptroller.

March 27, 1935.

COUNTY COMMISSIONERS—CATTLE DISTRICTS—REDISTRICTING

Dear Sir:

Assuming without deciding that a board of county commissioners after dividing their county into districts to be known as cattle districts, has the authority to change the same by re-districting the county and thereby reducing the number of such districts during the tenure of office of the inspectors appointed for the previously established district, it is my opinion that it would be necessary for the inspectors of the formerly established districts to resign, and inspectors appointed and commissioned for the new districts so established.

This answers your letter of the 27th instant.

COUNTY COMMISSIONERS

February 28, 1935.

COUNTY COMMISSIONERS—ADVERTISEMENT OF PURCHASES
EXCEEDING \$300.00*Dear Sir:*

I am in receipt of your letter of the 25th instant, advising that salesmen recently appeared before the County Commissioners to sell the County certain machinery (trucks, tractors and graders); that it was suggested that Section 2191, Compiled General Laws of Florida, 1927, required advertising for competitive bids on said equipment where the cost of same or the price to be paid was in excess of \$300.00 but the Board was advised that the salesmen could place such equipment in the County upon a rental basis of \$125 or \$250.00 per month, and when the total cost price was paid in rent the property would belong to the County; that the price of the equipment sought to be acquired was well in excess of \$300.00. You make inquiry as to the legality of the County acquiring the equipment on the above mentioned basis without complying with the provisions of said Section 2191.

In reply I beg to say in my opinion the above proposition is a subterfuge for the evasion of the provisions of said Section and the County Commissioners would not be authorized to make such purchase under such proposition without advertising for bids as required by the statute.

April 23, 1935.

COUNTY COMMISSIONERS, EMPLOYMENTS BEYOND TERM
OF OFFICE*Dear Sir:*

In reply to your verbal inquiry of this date, permit me to say a board of county commissioners has no authority to enter into a contract for the employment of persons where the said contract would bind their successors in office for a period of time beyond their term of office. In other words, where persons are employed by a board of county commissioners and hold their positions at the pleasure of the board, their employment can be terminated at any time regardless of a purported contract entered into between the former board and an employee.

Of course, there might be an exception to what has been said above where a statute expressly authorizes the board of county commissioners to enter into contracts which would bind their successors in office; however, I do not know of a statute which would authorize a contract by a board of county commissioners to employ persons to work for the county which would be binding upon their successors in office, because there does not appear to be a statute authorizing a board of county

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COUNTY COMMISSIONERS

commissioners to enter into contracts of employment for a specified period of time. As a general rule, boards of county commissioners employ persons to work for the county at the pleasure of the board and it is my opinion that a contract entered into by a board of county commissioners for the employment of persons where the employment extends beyond the period of the term of the board would not be binding upon their successors in office.

March 22, 1935.

COUNTY COMMISSIONERS—EXPENSES AND DUES TO STATE
ASSOCIATION

Dear Sir:

I am in receipt of your letter of the 15th instant, making inquiry if County Commissioners have authority to pay annual dues to the County Commissioners Association of Florida out of County funds.

In reply I beg to say on March 14, 1930, my predecessor in office, Hon. Fred H. Davis, now Justice of the Supreme Court, in answering a similar inquiry referred to paragraphs 11 and 12, Section 2153, Compiled General Laws of Florida, 1927, and used this language:

"In my opinion, the county commissioners under authority of the above provision of the law have the right to provide for the attendance of one or more of their members at the State Association of County Commissioners when it meets for the purpose of discussing and acting upon matters of public welfare, which relate to their official duties and powers, provided the payment of such expenses is properly arranged for in the county budget."

I concur in the above opinion and under the same reasoning it is my opinion that County Commissioners will be authorized to pay reasonable annual dues or membership fees to the State Association of County Commissioners' meeting for the purposes recited above when provision therefor has been made in the County Budget.

January 26, 1935.

COUNTY COMMISSIONERS—WHEN TERM OF OFFICE BEGINS

Dear Sir:

Answering your letter of the 22nd inst., I beg to say the term of County Commissioners this year began January 8, 1935, under the provisions of Section 14 of Article XVIII of the State Constitution, reading as follows:

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"The terms of office of all County officers, unless otherwise provided, shall commence on the first Tuesday after the first Monday in January next after their election."

January 24, 1935.

COUNTY COMMISSIONERS—DISTRICTS

Dear Sir:

I am in receipt of your letter of the 19th instant, with reference to re-districting County Commissioners Districts in the County.

In reply your attention is called to Section 5, Article VIII of the State Constitution, reading as follows:

"Immediately upon the ratification of this Amendment the county commissioners of the several counties of this State shall divide their respective counties into five commissioners' districts, to be numbered respectively from one to five, inclusive, and each district shall be as nearly as possible equal in proportion to population, and thereafter there shall be in each of such districts a county commissioner, who shall be elected by the qualified electors of said county, at the time and place of voting for other county officers, and shall hold his office for two years. The powers, duties and compensation of such county commissioners shall be prescribed by law: Provided, that nothing herein shall affect the terms of commissioners holding office at the time of such division: Provided, further, that all vacancies occurring by limitations of terms, or from death, resignation or otherwise, before the election of 1902, shall be filled by appointment by the Governor, as now provided by law."

You will note that the above quoted provision of the Constitutions is as amended at the General Election in 1900.

Your attention is further called to Section 2150, Compiled General Laws of Florida, 1927, originally Section 7 of Chapter 3723, Acts of 1887, reading as follows:

"Any such district or districts may be changed or altered on a petition of two-thirds of the registered voters of the said district or districts, and by a vote of three-fifths of the county commissioners, once in every five years; but such change shall not become operative until the expiration of the term of the commissioner who shall be holding by election for such district so to be changed; and upon any such change or alteration of any district, like proceedings shall be had as to publishing, filing and recording the same as hereinbefore specified, upon the original establishment of such district."

BIENNIAL REPORT OF THE ATTORNEY GENERAL
COUNTY COMMISSIONERS

January 15, 1935.

WHETHER OR NOT CHAIRMAN OF COUNTY COMMISSIONERS MAY
SIGN WARRANTS WITH RUBBER STAMP

Dear Sir:

Replying to your favor of January 11th., I do not think it would be proper for the Chairman of the Board of County Commissioners to sign county warrants with a rubber stamp.

I have discussed the matter with the State Auditor and he stated that it would not meet the approval of his office.

SECTION 4

TAX ASSESSORS

February 15, 1936.

COUNTY OFFICERS—DUTY OF COUNTY ASSESSOR OF TAXES IN
ADMINISTERING HOMESTEAD EXEMPTION AMENDMENT TO
MAKE SEPARATE ASSESSMENTS REPRESENTING JOINT
INTERESTS OF OWNERS

Dear Sir:

I have your letter requesting my opinion as to whether or not a County Assessor of Taxes in administering Section 7 of Article X of the State Constitution, generally referred to as the Homestead Exemption Amendment, is required to make separate assessments, against the same piece of property, representing the joint interests of the owners.

Chapter 17,060, Laws of Florida, Acts of 1935, regulates the allowance of the exemption of homesteads from taxation and prescribes the duties of County and City Officials and taxpayers with respect thereto. Section 2 of this Act reads in part as follows:

"The title herein referred to may be held by the entireties, jointly or in common with others, and said exemption may be apportioned among such of the owners as shall reside thereon as their respective interests shall appear, but no such exemption of more than Five Thousand Dollars shall be allowed to any one person or on any single parcel of real property, nor shall the amount of the exemption allowed any person exceed the proportionate assessed valuation based upon the interest owned by such person." (Emphasis supplied)

It is my opinion that under authority of the quoted part of Section 2 of Chapter 17,060, *supra*, it is the duty of the County Assessor of Taxes to apportion the exemption among such of the owners as are entitled thereto as their respective interests shall appear and that this apportionment can only be accomplished by assessing separately their several interests and other interests in the property.

February 17, 1936.

COUNTY OFFICERS, COUNTY ASSESSOR OF TAXES AND SURETY
NOT LIABLE FOR MISTAKES MADE IN GOOD FAITH IN DE-
TERMINING WHETHER PROPERTY ENTITLED TO HOME-
STEAD EXEMPTION

Dear Sir:

I have your letter in which you request my opinion as to "when-ever application is made for taxation exemption on the homestead,

TAX ASSESSORS

as authorized by Section 7, Article X, of the Constitution, should the Assessor in an instance of doubt, put the applicant to the expense of a law suit to enforce his claim; and if not, are the Assessor and the surety on his bond liable for erroneously deciding such issue?"

It is the duty of the County Assessors of Taxes to "ascertain by diligent inquiry the names of all taxable persons in his County, and also all of their taxable personal property, and *all taxable real estate therein*, on the first day of January of such year *****". (Emphasis supplied). Section 913 C. G. L., 1934 Supplement. All real property in the State not expressly exempt therefrom is subject to taxation. Section 893 C. G. L. Sections 920, 921 and 922 C. G. L. provide the mode to be followed by the County Assessor of Taxes in assessing lands, and these Sections impose upon the Assessor the duty of making the assessments.

It is the duty of the County Assessor of Taxes to determine whether a particular piece of property is exempt from taxation under the Constitutional provision and laws and the facts concerning the property claimed to be exempt (See Sections 6 and 7 of Chapter 17,060, Acts of 1935, in reference to exemption of homestead property). A person seeking to have his property exempted from taxation must bring it clearly within the exemption granted by the Constitution and the statutes. *RAST versus HULVEY*, 77 Fla. 74, 80 So. 750.

It is my opinion that if the County Assessor of Taxes has, in good faith, examined the claim filed with him for exemption of property alleged to be homestead property and he is not convinced that it is exempt from taxation, he should refuse to allow the exemption. If the claim for exemption is not allowed, the claimant may, of course, present the matter to the Courts for final determination. The Assessor and the Surety on his bond will not, in my opinion, be liable for mistakes made in good faith by the Assessor in determining whether or not a particular piece of property is entitled to the exemption claimed. 61 C. J. 615.

June 15, 1936.

COUNTY OFFICERS—COMMISSIONS ALLOWED COUNTY ASSESSOR
OF TAXES AND TAX COLLECTOR WHEN VALUATION IS LESS
THAN \$5,000,000.00 BY REASON OF HOMESTEAD
EXEMPTIONS

Dear Sir:

Receipt is acknowledged of your letter which reads in part as follows:

"Under Section 1029, Compiled General Laws, Tax Assessors in counties with an assessed valuation of less than Five Million Dollars

TAX ASSESSORS

are entitled to receive two per cent commission on all taxes assessed in excess of Seven Thousand Dollars.

Due to the Constitutional Amendment exempting homesteads from taxation, we now have the peculiar situation of having two classes of valuations in each county, one of which might exceed the Five Million Dollars, but the other would be less than the Five Million Dollars.

I have before me the valuations in a particular county on both homesteads and non-exempt property which total more than Five Million Dollars. However, included in this sum is the valuation on homesteads in a certain district, which does not levy a Debt Service Tax for either county or district purposes, with the result that all homesteads within the district are fully exempt and no taxes of any kind have been extended against them. When the valuations of these homesteads is deducted from the total valuations of the county, the valuation then is less than Five Million Dollars.

Under these circumstances, is the Tax Collector and Tax Assessor entitled to two per cent or one and one half per cent on all taxes assessed or collected in excess of Seven Thousand Dollars."

Under the facts recited in your letter, it is my opinion that:

1. The County Assessor of Taxes is entitled, under Section 1029, Compiled General Laws of Florida, 1927, to receive 2% commission upon the amount of taxes, general or special, assessed, but not on each separately, excluding errors, in excess of Seven Thousand Dollars. This rate applies to taxes assessed for the State and to those assessed for the County.

2. The Tax Collector is entitled, under Section 1034, Compiled General Laws of Florida, 1927, to 2% commission upon the aggregate amount of State taxes, general or special, including licenses, collected by him and paid to the State Treasury, in excess of Seven Thousand Dollars. He is also entitled to the same rate of commission for collecting the County tax.

February 5, 1936.

COUNTY ASSESSOR OF TAXES NOT ENTITLED TO COMMISSIONS
ON TAXES EXTENDED BY CLERK OF CIRCUIT COURT
OR TAX COLLECTOR

Dear Sir:

I am in receipt of your request for an opinion upon the question of whether or not a County Assessor of Taxes is entitled to commissions upon taxes extended on the tax roll by the Clerk of the Circuit Court or by the County Tax Collector.

TAX ASSESSORS

Section 1028, Compiled General Laws of Florida, 1927, fixes the commissions of the County Assessor of Taxes generally. Section 1029, Compiled General Laws of Florida, 1927, fixes the commissions of the County Assessor of Taxes in Counties having a total assessed valuation of real and personal property not exceeding five million dollars. Section 1028, supra, reads in part as follows:

"The County Assessor of Taxes shall be entitled to receive the following commissions upon the amount of taxes, general or special, assessed, but not on each separately, excluding errors, to-wit:*****".

Section 1029, supra, reads in part as follows:

"The County Assessor of Taxes in Counties having a total assessed valuation of real and personal property not exceeding five million dollars shall be entitled to receive the following commissions upon the amount of taxes, general or special, assessed, but not on each separately, excluding errors, to-wit *****".

It is my opinion that under the above Sections of the statutes, the County Assessor of Taxes is only entitled to commissions upon taxes assessed by him on the tax roll, and that he is not entitled to commissions upon taxes extended by the Clerk of the Circuit Court or by the County Tax Collector. There is no provision made by the statutes for payment of commissions or fees for the extension of taxes on the tax roll by the Clerk of the Circuit Court or the County Tax Collector.

March 27, 1935.

KIND OR CLASS OF ERRORS THAT MAY BE CORRECTED BY
COUNTY ASSESSOR OF TAXES AFTER DELIVERY OF
TAX ROLL TO TAX COLLECTOR

Dear Sir:

I have your letter in which you request my opinion as to the kind or class of errors a County Assessor of Taxes is authorized, under Section 894, Compiled General Laws of Florida, 1934 Supplement, to correct on the tax roll after it has been delivered to the County Tax Collector.

Our Supreme Court in discussing the duty and authority of the County Assessor of Taxes under Section 894, supra, and other statutes, in the case of *STATE EX REL RANGER REALTY CO. versus LUMMUS, TAX ASSESSOR, ET AL.*, 149 So. 650, said:

"The effect of the statutes is to impose upon the tax assessor a continuing duty to prepare according to law a legal tax roll, and, if through oversight, mistake, or inadvertence he has failed to do so, the statute itself affords ample power and

TAX ASSESSORS

authority for the tax assessor to correct his mistake in the preparation of the roll by forthwith making the necessary changes and amendments of the roll to make the same conform to the 'form of things' required by the tax laws,*****.

From a careful reading of all of the statutes dealing with the levy and assessment of ad valorem taxes, I am convinced that the County Assessor of Taxes does not have authority to make any change in the valuation he has placed on a piece of property after the tax roll has been delivered to the Tax Collector, even if he admits that the valuation in question is erroneous. See Sections 893-945, Compiled General Laws of Florida, and particularly, Sections 913, 917, 929, 931, 934, 936 and 937. Ample provision is made for the correction of errors in the assessed value of a piece of property as fixed by the Assessor. It is the duty of every person owning or having the control, management, custody or agency of property subject to taxation to make a return thereof to the County Assessor of Taxes and to give the true cash value thereof, "and upon failure to do so, the assessment and valuation made by the assessing officer or officers shall be deemed and held to be binding upon such owner or other person or corporation interested in such property, unless complaint is made on such assessment and valuation on the day set for hearing complaints and receiving testimony as to the value of any property real or personal, as fixed by the County Assessor of Taxes". See Section 917, *supra*.

If the owner or person in charge of the property is dissatisfied with the valuation as fixed by the Assessor, he may present his case to the Board of County Commissioners sitting as a Board of Equalizers at their meetings, which are held pursuant to Section 929, *supra*. This Board has authority to equalize assessments as between property. If the Board fails to give the desired relief, the only recourse is the Courts. There must be an end to the annual levying and assessment of taxes against property, otherwise, uncertainty and chaos would result in the separation of the government. The statutes are designed to produce orderliness in the process of levying and assessing taxes and the fixing of a valuation upon a piece of property by the Assessor is only one step in this process. When the Assessor and the Board of County Commissioners have performed their duties, and the tax roll is delivered to the Tax Collector, the Assessor's authority to change a valuation is at an end.

It is my opinion that the authority of the County Assessor of Taxes under Section 894, *supra*, to correct errors on the tax roll after it has been delivered to the Tax Collector is limited to making necessary changes and amendments of the roll to make it conform to the "form of things" required by law to produce a valid tax roll. The following are examples of changes and amendments that may be made by the Assessor after the tax roll is delivered to the Tax Collector:

1. May insert the aggregate amount of taxes against the land;

TAX ASSESSORS

2. May place the word "unknown" in the column showing the name of the owner; and,
3. May add the plat book and page number to a description referring to a recorded plat.

This authority, however, does not authorize or permit the Assessor to make any change in the valuation of a piece of property after the tax roll has been delivered to the Tax Collector.

January 21, 1935.

TAX ASSESSORS MAY CHARGE TO EXPENSES COST OF
ATTENDING MEETING OF EXECUTIVE COMMITTEE
OF THE STATE ASSOCIATION

Dear Sir:

This will acknowledge receipt of your letter of January 19th, in which you request my opinion as "to whether or not Tax Assessors, members of the Executive Committee of their Association, who, as such members, are called upon to attend meetings such as that of the Executive Committee held in Tallahassee, January 8th for the purpose of conferring and formulating policies for the performance of their duties, will be authorized to charge the expenses of such trips in their expense account".

A County Assessor of Taxes is entitled to charge as expenses of operating his office whatever expenditures he may be required to make in the performance of the official duties of his office. It is my opinion that the expenses of the Tax Assessors in attending the meeting of the Executive Committee of the State Association of Tax Assessors, as set forth in your letter, held "for the purpose of conferring and formulating plans for the performance of their duties", are expenses incurred in operating the office and may properly be charged as necessary expenses. See Opinion dated August 25, 1931, page 554, Biennial Report of the Attorney General, 1931-32.

January 21, 1935.

COUNTY ASSESSOR OF TAXES DOES NOT HAVE AUTHORITY TO
ADMINISTER OATH TO APPLICANT FOR TAX EXEMPTION

Dear Sir:

I have your letter of January 18th, in which you request my opinion as to whether or not a County Assessor of Taxes has authority to administer an oath to a person filing with him an application for exemption from taxes.

TAX ASSESSORS

The only authority of a County Assessor of Taxes to administer an oath is found in Section 918, Compiled General Laws of Florida, 1927. This Section of the statutes requires him to administer an oath to any taxpayer desiring to give in a list of his personal property and who desires to make oath that the list is full and correct.

It is my opinion that a County Assessor of Taxes does not have authority to administer an oath to any person filing with him an application for an exemption from taxes.

January 11, 1935.

SALARIES—FEES OF TAX ASSESSOR

Dear Sir:

I am in receipt of your letter of the 12th ultimo, with reference to your fees when Tax Assessor for assessing Special Tax School District taxes in Gilchrist County.

In reply I beg to say that there are a number of Acts applying to counties of certain population which allow commissions to Tax Assessors for assessment of Special Tax School District taxes, but I fail to find any such Act which applies to Gilchrist County. Neither do I find any General Act allowing commissions to Tax Assessors for such assessments.

I refer you to the decision of our Supreme Court in the case of *Rawls, et al. v. State ex rel. Nolan*, 98 Fla. 103, 122 So. 222, the first headnote of which case reads as follows:

"Public officers have no legal claim for official services rendered, except when, and to the extent that, compensation is provided by law, and when no compensation is so provided rendition of such services is deemed to be gratuitous."

It was held in that case that under the law which failed to provide for commissions to Tax Assessors for assessing Special Tax School District taxes said officers were not entitled to receive commissions from the county for such assessments.

Your attention is further called to Section 7465, Compiled General Laws of Florida, 1927, which provides that each member of the Board of County Commissioners voting to pay any claims against the county not authorized by law shall be guilty of a misdemeanor, etc. See also Section 7466 to the same effect with reference to the Clerk of the Circuit Court signing a warrant to pay any claim against the county not authorized by law.

In view of the above it does not appear that the County Commissioners can pay you commissions on taxes assessed by you as Tax Assessor for Special Tax School Districts.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
TAX ASSESSORS

October 16, 1936.

COMMISSIONS TAX ASSESSOR

Dear Sir:

I acknowledge receipt of your letter of the 14th inst., in which you ask if the Honorable _____, Assessor of Taxes of Sarasota County, is entitled to receive commissions for the assessments in 1934 and 1935 against the Rembrandt Corporation.

In the Spring of 1936, Supreme Court of Florida held the property of the Rembrandt Corporation was not assessable.

It is my opinion, however, that Mr. _____ should be allowed commissions for the assessments in 1934 and 1935.

November 14, 1936.

COMMISSIONS ALLOWED COUNTY ASSESSORS OF TAXES AND
TAX COLLECTORS UPON VALUATIONS LESS THAN FIVE
MILLION DOLLARS BY REASON OF HOMESTEAD
EXEMPTION. SECTIONS 1028 AND 1029

Dear Sir:

I have your letter of the 9th inst., in which you ask my opinion as to the fees the Assessor and Collector is entitled to under the following circumstances:

"There is one county in the State whose values, including the values of homesteads assessable for debt service, slightly exceed \$5,000,000. Since, however, the homesteads are subject only to the levy for debt service and not for the State levy, is the Assessor and Collector entitled to 1½%, as provided by Section 1028, or 2%, as provided by Section 1029, from the State of Florida?"

On June 15th, I advised you that Tax Collectors and Tax Assessors were entitled to, under Section 1029, C. G. L., to 2% commissions on amounts in excess of \$7,000, when the taxable values in the County, by reason of Homestead exemption were less than \$5,000,000.

Section 1029, C. G. L., is a statute in derogation of the general Act relating to Assessors' commissions, and Section 1034 is an Act in derogation of the general Act relating to the Tax Collectors' commissions and both of these Acts should be strictly construed. It is, therefore, my opinion that under the facts above stated the Tax Assessor and the Tax Collector should be entitled to 1½% commissions and not 2% commissions on amounts in excess of \$7,000.00.

SECTION 5

TAX COLLECTORS

December 5, 1935.

COUNTY OFFICERS—FEES OF TAX COLLECTOR UPON RAILROAD
TAXES COLLECTED BY THE COMPTROLLER
THROUGH THE COURTS.

Dear Sir:

I have your letter in which you state the following:

"Under Sections 964, 965 and 966 of the Compiled General Laws, which provide for the collection of taxes assessed against Railroads, it has been the custom of this office to allow the Tax Collector the usual commissions on all such taxes which are voluntarily paid to the Comptroller without suit.

Lately a number of items, the legality of which was being tested in the Courts, have been compromised and the question now arises as to whether or not the Tax Collector is entitled to the usual commissions on this class of collections made through the Comptroller's office."

It is my opinion that there is no difference, in so far as the payment of fees to the Tax Collector is concerned, in the Comptroller collecting Railroad taxes that are voluntarily paid and in collecting such taxes through the Courts. If the Tax Collector is entitled to fees on Railroad taxes collected by the Comptroller which are paid voluntarily then he is also entitled to fees on Railroad taxes which the Comptroller collects through the Courts.

December 9, 1935.

COUNTY OFFICERS—COMMISSIONS OF TAX COLLECTOR UNDER
SECTION 1034, C. G. L. FOR COLLECTING SPECIAL ROAD AND
BRIDGE DISTRICT TAXES, AND COMMISSIONS OF TAX
ASSESSOR UNDER CHAPTER 15,663, ACTS OF 1931, FOR
ASSESSING SUCH TAXES IN COUNTIES THAT HAVE
AN ASSESSED VALUATION OF LESS THAN FIVE
MILLION DOLLARS

Dear Sir:

I have your letter of November 27th, in which you request my opinion upon the following questions:

1.

What commissions are allowed the Tax Collector under Section 1034, Compiled General Laws of Florida, 1927, in Counties having a total

TAX COLLECTORS

assessed valuation of real and personal property not exceeding five million dollars for collecting taxes levied for the payment of principal and interest on bonds issued by Special Road and Bridge Districts?

2.

What commissions are allowed the Tax Assessor under Chapter 15,663, Laws of Florida, Acts of 1931, for assessing taxes for the payment of the principal and interest on bonds issued by Special Road and Bridge District in Counties having a total assessed valuation of real and personal property not exceeding five million dollars?

Section 1034, *supra*, prescribes the commissions of the Tax Collector for collecting taxes, general or special, as follows: On first \$4,000.00 collected, 10%, on next \$3,000.00 collected, 5%, and on the balance collected, 2%. The commissions for collecting other special *taxes* shall be at the rate of 1½% and shall be paid out of the special taxes collected.

My predecessor in office, the Honorable Fred H. Davis, now a member of the Supreme Court of the State, in an opinion dated August 2, 1930, (p. 228, Biennial Report of the Attorney General, 1929-1930) ruled that under Chapter 14,486, Acts of 1929, and the Supreme Court's interpretation thereof, taxes levied for the payment of principal and interest on bonds issued by Special Road and Bridge Districts were *special County taxes* within the meaning of Section 1028, Compiled General Laws of Florida, 1927, which fixes the commissions of the County Assessor of Taxes in all Counties having an assessed valuation of more than five million dollars.

In applying to your first question the reasoning of the opinion above referred to, it is my opinion that the Tax Collector under Section 1034, *supra*, is entitled to the same commissions for collecting taxes levied to pay the principal and interest levy on bonds issued by Special Road and Bridge Districts as he is for collecting other *County taxes* and that his commissions on the collection of these taxes together with other County taxes are 10% on the first \$4,000.00 collected, 5% on the next \$3,000.00 collected, and 2% on the balance collected.

Chapter 15,663, *supra*, limits the commissions of Tax Assessors who come within the terms of the Act for assessing *special taxes* and *special district taxes* to 1½% upon the amount assessed.

It is my opinion that taxes levied for the payment of principal and interest on bonds issued by Special Road and Bridge Districts are *special county taxes* and that the commissions of the Tax Assessor who comes within the terms of the Act (Chapter 15,663, *supra*), including those in Counties having a total assessed valuation not exceeding five million dollars (Section 1029, C. G. L.), for assessing taxes for the payment of principal and interest on bonds issued by Special Road and Bridge Districts are limited to 1½% of the total taxes assessed for such purpose.

TAX COLLECTORS

February 15, 1936.

COUNTY OFFICERS—TAX COLLECTOR HAS NO AUTHORITY TO
REFUND TAXES PAID THROUGH ERROR OR MISTAKE*Dear Sir:*

Receipt is acknowledged of your letter requesting my opinion upon the following question:

Is the County Tax Collector authorized to refund taxes paid upon property that was in fact a homestead under Section 7 of Article X of the State Constitution where the owner failed to make application for the exemption until after the payment of the taxes.

There is no provision made by the Florida Statutes for the refund of taxes paid upon lands through error or mistake. The Statutes do provide for the refund of certain excise taxes in case of over-payment. (See Chapter 16,848, Acts of 1935, commonly referred to as the Chain Store Act). However, no such authority exists in reference to refunding over-payment of taxes on lands.

It is my opinion that the County Tax Collector is not authorized to refund taxes paid upon property that was in fact a homestead where the owner failed to make application for the exemption until after the payment of the taxes. The only method by which relief may be given in such cases is by legislative act.

March 18, 1936.

BONDSMEN OF COUNTY TAX COLLECTOR NOT LIABLE FOR HIS
FAILURE TO COLLECT LICENSE TAXES IF HE USES DUE DILIGENCE*Dear Sir:*

I have your letter requesting my opinion as to the liability of bondsmen of a County Tax Collector for his failure to collect State and County occupational license taxes.

It is the duty of the County Tax Collector to collect certain State and County occupational license taxes. Section 1050, C. G. L. 1927. The County Tax Collector is required to enforce the payment of these license taxes by seizure and sale of the property of the person, firm or corporation who fails to obtain a proper license, and it is his duty also to report violations of the license laws to the Comptroller and the State Attorney. See Section 1272, C. G. L.

Section 2416, C. G. L. requires a County Officer to give a bond "conditioned for the faithful performance of the duties of his office". Section 2417, C. G. L. requires the Tax Collector of each County to give a bond in a sum to be fixed by the Board of County Commissioners subject to the approval of the Comptroller as to amount and surety.

TAX COLLECTORS

It is my opinion that the County Tax Collector is required to exercise reasonable diligence in the collection of State and County occupational license taxes and, if he does perform his duty in this manner, he and his bondsmen will not be liable for his failure to collect occupational license taxes. The mere failure to collect occupational license taxes does not necessarily establish his liability because an officer is presumed to have performed his duty in a legal manner. In order to hold him and his bondsmen liable for failure to collect such taxes, it must be shown that he has not exercised reasonable diligence in making the collection of occupational license taxes. 61 C. J. 1034 and cases cited.

November 6, 1935.

INTOXICATING LIQUORS—COMMISSIONS TO TAX COLLECTOR
FOR ISSUING LICENSES—APPROVAL OF EXPENSE ACCOUNTS

Dear Sir:

I have your letter of the 30th ultimo referring to Chapter 16,774, Laws of Florida, Acts of 1935, known as the Beverage Act.

Answering your inquiry as to approval of expense accounts incurred under said Act, I beg to say in my opinion such expense accounts should be approved by the Beverage Department. With particular reference to transportation request slips and charges, I beg to say if the duplicates of such slips are attached to the expense account and approved by the Beverage Department it would not appear that the originals of such slips sent in to the Comptroller by the transportation companies would also have to be approved.

Answering your further inquiry contained in said letter as well as your letter of the 29th ultimo, with reference to commissions to Tax Collectors for issuing licenses under the Beverage Act, I refer you to the general statute relating to commissions to Tax Collectors, which is Section 1033, Compiled General Laws of Florida, 1927, which provides that the Tax Collector shall be entitled to commissions upon the aggregate amount of State taxes, General or Special, including licenses collected by him and paid in to the State Treasury but not on each separately. By reference to Chapter 16,774, Acts of 1935, the above mentioned Beverage Act, it appears that 8% of the receipts is appropriated to the enforcement of the Act and the balance shall go to the General Revenue Fund of the State. I find no appropriation in said Act which can be construed to cover commissions to Tax Collectors for issuing licenses thereunder. It is, therefore, my opinion that the commissions to the Tax Collectors for issuing licenses under said Act should be paid under Section 1033, above mentioned, from the same fund from which commissions are paid by the State for collecting other State taxes.

TAX COLLECTORS

January 16, 1935.

TAX COLLECTORS NOT REQUIRED TO ACCEPT PAYMENT OF
TAXES UNDER PROTEST

Dear Sir:

I have your letter in which you request my opinion as to whether or not the Tax Collector is required to accept the payment of liquor license taxes, or other taxes, under protest.

It is my opinion that neither a State officer nor a County officer charged with the duty of collecting taxes has authority to accept the payment of taxes under protest. This, of course, applies to liquor license taxes as well as to all other taxes. See opinion of July 10, 1931, page 770, Biennial Report of the Attorney General, 1931-32.

SECTION 6

CLERKS OF CIRCUIT COURT

November 22, 1935.

COUNTY OFFICERS—FEES CHARGED BY CLERK OF CIRCUIT
COURT IN REDEMPTION OF TAX SALE CERTIFICATE,
OWNED BY THE STATE

Dear Sir:

In April, 1934, I published a pamphlet entitled "A Compilation of Statutes Governing Fees to be Paid to County Officers". On page 18 thereof appears a list of fees to be charged by the Clerk of the Circuit Court for redemption of tax sale certificates, which schedule is as follows:

"TAX REDEMPTION SCHEDULE

Search for oldest tax certificate. (Secs. 1003 and 1004)	.50
Each subsequent year. (Secs. 1003 and 1004)	.15
Receipt and certificate of redemption with seal. (Secs. 986 and 4867)	.50
Redemption or sale of each tax certificate and record thereof. (Secs. 985 and 1004)	.50
(For Sections 985, 1003 and 1004 in this schedule see 1934 Supplement.)"	

The Supreme Court of Florida, in two recent opinions, October 16 and November 19, 1935, in the case of the State of Florida upon the relation of Atlantic Peninsular Holding Company, Relator, versus George O. Butler, as Clerk of the Circuit Court of Palm Beach County, Florida, Respondent, 164 So. 128, held:

- (1) That in the redemption of a tax sale certificate owned by the State, the Clerk was not entitled to collect a fee of 50¢ or any other amount for preparing and executing a receipt to the person so redeeming.
- (2) That in such case the Clerk is entitled to collect a fee of 50¢ for search for the oldest tax sale certificate and a fee of 15¢ for each subsequent tax sale at which the land was sold or subsequent omitted tax year.

The effect of the decision is to change the schedule of fees set forth in the pamphlet above referred to so that in the future the Clerk of the Circuit Court *will not be entitled to collect a fee* for "Receipt and certificate of redemption with seal" in the redemption of the tax sale certificate *owned by the State*. The decision does not change the fees to be charged by the Clerk for "Receipt and certificate of redemption with seal" upon the redemption of tax sale certificates *owned by individuals*.

CLERKS OF CIRCUIT COURT

December 7, 1935.

CLERKS CIRCUIT COURT—COMMISSIONS

Dear Sir:

This is in response to your communication of December 6, 1935, enclosing a letter of Honorable _____, Clerk of the Circuit Court of St. Johns County.

Mr. _____ states that he forwarded a certain sum which was deposited in the registry of his court to you, under the provisions of Chapter 15996, Laws of Florida, Acts of 1933, and inquires whether or not he is entitled to commission on this money, as provided by Section 4867, Compiled General Laws of 1927.

It is my opinion that Mr. _____ is entitled to commission under Section 4867, Compiled General Laws, 1927, because the provision therein contained for the payment of a commission to the Clerk of the Circuit Court in connection with receiving and paying out money from the registry of the court is not inconsistent with Chapter 15996, Laws of Florida, Acts of 1933, and is not repealed by the latter statute.

October 1, 1935.

CLERKS CIRCUIT COURTS—COSTS IN CIVIL CASES—DEPOSITS IN ADVANCE NOT REQUIRED

Dear Sir:

Replying to your letter of the 30th ult., I beg to advise that there is no law requiring deposits to cover costs in civil cases in advance of the fees earned, nor is there any law authorizing the clerk to demand such deposit.

We had this matter up in the Frank Brown case in Jacksonville a few years ago and the conclusion there reached was that in view of the fact that the law does not require deposits to cover costs in advance of the work done, that when such deposits are made in advance, it is for the convenience of the litigant and in such instances the clerk, in accepting the same, becomes the agent of the litigant for the payment of the costs as accrued. In other words, as far as the clerk can in law go is to demand his costs for services rendered in each particular instance at the time such service is rendered, but he has no lawful authority to go further and demand a deposit to cover services to be rendered in the future.

This is a matter that should be remedied by legislation and I am sorry that it has not been done. I can fully appreciate the position of the litigant who has in good faith made a deposit to cover costs and

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CLERKS OF CIRCUIT COURT

later finds that that cost has been dissipated and he is again called upon to pay more, but again the fault lies in the lack of proper legislation on the subject.

October 19, 1935.

STATE ROAD DEPARTMENT—CANCELLATION OF TAX LIENS
AGAINST PROPERTY ACQUIRED UNDER CHAPTER 17459,
ACTS OF 1935—FEES OF CLERK AND ASSESSOR.

Dear Sir:

This acknowledges your communication of October 17, 1935, wherein you advise that the State Road Department, under the above mentioned statute, is securing the cancellation of certain tax liens against properties acquired for road purposes.

You advise that the Clerk of the Circuit Court has proposed a cost bill of \$1.00 for canceling each certificate and that the Assessor has submitted his bill for commissions due for assessing the taxes being canceled.

You ask whether or not State Road Department may legally pay these items.

It is my opinion that the State Road Department is not liable for either of these items.

In the first place, the above mentioned statute contains no provision for fees or commissions in connection with such cancellation.

In the second place, as to the Clerk of the Circuit Court, no provision is made in the statutes fixing his fees (Sec. 4867 C. G. L., 1927) for a fee upon the cancellation of a tax sale certificate, and we understand that the State Auditing Department has consistently ruled that he is entitled to none.

Next, as to the Assessor, his commissions are payable pursuant to Sections 1028 et seq. C. G. L. 1927 and numerous special acts which have been enacted with reference thereto (see Sections 1029 et seq. 1934 Supplement to 1927 Compiled General Laws) and the manner and mechanics of paying the same are inconsistent with any idea that he is to be paid upon the cancellation of an outstanding certificate or tax lien.

Furthermore, it is significant that the statutes with reference to cancellation in other instances, for example Sections 1005 et seq., C. G. L. 1927, are silent as to the payment of any fee to the Clerk of the Circuit Court or the Tax Assessor.

CLERKS OF CIRCUIT COURT

July 10, 1935.

FEES OF A CLERK OF THE CIRCUIT COURT UNDER SECTION 8
OF HOUSE BILL 163, CHAPTER 17406, ACTS OF 1935

Dear Sir:

I have your letter requesting me to advise you as to what fees a Clerk of the Circuit Court may charge under House Bill 163, Laws of Florida, Acts of 1935.

You state that pursuant to Section 7 of the Act you have prepared and prescribed forms to be used in making application for a tax adjustment to the Delinquent Tax Adjustment Board, and that in filling out the application, it will be necessary for the taxpayer to show the outstanding tax sale certificates and the amount of the delinquent taxes, interest and penalties. You also state that as the Clerk is the custodian of the delinquent tax records of the County, he will be called upon to furnish the information to be used in preparing these applications.

Section 6 of the Act reads as follows:

"FEES OF CLERK.—The Clerk of the Circuit Court shall receive, in lieu of all other fees, for the redemption or assignment of any tax sale certificate which shall have been adjusted or compromised hereunder a fee of twenty-five (\$0.25) cents for each certificate so redeemed or assigned."

It is my opinion that the meaning and intent of Section 8 as above quoted is clear and that the Section means what it says, to-wit, that the Clerk shall receive in lieu of all other fees the fee of 25¢ for each certificate so redeemed or assigned and that the total fee of the Clerk of the Circuit Court for each certificate redeemed or assigned shall be the sum of 25¢. No provision is made in the Act for the Clerk receiving any fee whatsoever for searches which he may find it necessary to make in assisting taxpayers in preparing their applications to be submitted to the Delinquent Tax Adjustment Board. In the absence of a provision authorizing the Clerk to charge a fee for making the search or searches necessary, and because of the direct and positive language in Section 8 which specifically limits the fees of the Clerk to 25¢ for each certificate so redeemed or assigned, it is my opinion that no charge can be made by the Clerk for making such search or searches.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
CLERKS OF CIRCUIT COURT

June 13, 1935.

COMPTROLLER DOES NOT HAVE AUTHORITY TO RECOGNIZE AND
ENDORSE REQUISITIONS FOR PAYMENT OF JURORS MADE
BY ANY PERSON OTHER THAN THE CLERK OF THE
COURT IN WHICH THE JURORS WILL SERVE.

Dear Sir:

I have your letter of June 13th in which you recite the following facts: that Honorable _____ is Clerk of each of the following Courts in Dade County, Florida, to-wit, Criminal Court of Record, Civil Court of Record and Court of Crimes. Proper requisitions have been made upon you for the several amounts of money to be used in the payment of jurors in the Courts respectively, to-wit: Court of Crimes, \$250.00; Criminal Court of Record, \$500.00; and Civil Court of Record, \$500.00. Upon receipt of these requisitions you endorsed your approval thereon and transmitted them to the State Treasurer who drew his checks for the respective amounts and forwarded them to Honorable _____, Clerk of these Courts. These checks have been returned to you by Honorable _____, Clerk of the Circuit Court of Dade County, with the statement that they were returned because of circumstances with which you are familiar. He also enclosed in his letter a requisition for certain money for the payment of the jurors of each of the above named Courts. I note that Mr. _____ has signed each requisition as Clerk of the respective Court. He states in his letter that the requisitions are made upon the instructions of Governor Sholtz and that the money when received will be used to pay the jurors in each of the Courts.

You request my opinion as to whether or not you should recognize the requisitions signed by Mr. _____ and transmit them to the Treasurer with the request that they be honored.

Section 4479, Compiled General Laws of Florida, 1927, makes it the duty of the Clerk of the Criminal Court of Record, Civil Court of Record and certain other Courts to make a requisition upon you for the payment of jurors. Section 4480, Compiled General Laws, *supra*, makes it your duty upon receipt of the request from the Clerk of these Courts to endorse thereon the amount that you may deem necessary for the payment of the jurors and thereupon to transmit the request with your endorsement to the State Treasurer who will transmit the funds to the Clerk making the requisition. Section 4482, Compiled General Laws, *supra*, requires the Clerk who made the requisition to disburse the money in payment of the jurors of his Court.

There is no provision of the law which permits the Clerk of the Circuit Court of Dade County to make a requisition upon you for money required in the payment of jurors in the Civil Court of Record, Criminal

CLERKS OF CIRCUIT COURT

Court of Record or Court of Crimes of Dade County. The only person that can make this requisition is the Clerk of the Court in which the jurors will serve.

It is my opinion that you do not have authority to accept and endorse the requisitions for the payment of jurors made by Mr. _____ on behalf of the Civil Court of Record of Dade County, the Criminal Court of Record of Dade County, and the Court of Crimes of Dade County because Mr. _____ is not the Clerk of either of these Courts. It is your duty to recognize and endorse requisitions for juror's pay when made by the Clerk of the Court in which the jurors will serve.

I am returning herein the correspondence attached to your letter.

February 8, 1935.

TAX CERTIFICATE REDEMPTION FEES.

Dear Sir:

I am in receipt of your letter of the 6th instant in which you state you find yourselves unable to concur in the schedule of fees payable to Clerks of Circuit Courts for the redemption of State and County tax certificates as set forth on page 18 of the "Compilation of Statutes Governing Fees to be Paid to County Officers" (April 1934), prepared by this office.

You also enclose with your letter a memorandum discussion of your views in the premises, which I have read with interest and which I appreciate your forwarding to me.

After carefully going into this matter again I do not find that I can change my views as to the legality of the fees of the Clerks of the Circuit Courts under the heading of "Tax Redemption Schedule" appearing on page 18 of the "Compilation of Statutes Governing Fees to be Paid to County Officers" (April 1934) prepared by this office.

January 16, 1935.

FEE OF A CLERK OF THE CIRCUIT COURT FOR MAKING ORDER OF PUBLICATION AND FOR MAKING COPIES THEREOF.

Dear Sir:

I have your letter of January 12th, in which you request my opinion as to the fee of a Clerk of the Circuit Court for making an Order of Publication and for making copies thereof.

It is my opinion that the fee of a Clerk of the Circuit Court for making:

CLERKS OF CIRCUIT COURT

(1) An order of Publication is 25¢ for the first 100 words and 12½¢ for each additional 100 words or less; and

(2) Each copy thereof, 25¢ for the first 100 words and 12½¢ for each additional 100 words or less.

See Section 4867, Compiled General Laws of Florida, 1927.

May 23, 1935.

TAX REDEMPTION FEES

Dear Sir:

I am in receipt of your letter of the 14th instant, referring to House Bill No. 163, Chapter 17406, of the 1935 Legislature providing for the creation in each County of a delinquent tax adjustment board. You make inquiry if the tax redemption fee of 25% allowed the Clerk of the Circuit Court, under the provisions of Section 8 of said Act, is all the Clerk can charge in cases of compromise and adjustment under said Act.

In reply I beg to say that the purpose of Section 8 appears to be specifically to fix the fees of the Clerk of the Circuit Court for redemption or assignment of tax sale certificates compromised or adjusted under the Act and no further provision for compensation to the Clerk for such services appears in the bill.

SECTION 7

COUNTY JUDGES

April 5, 1935.

COMPENSATION OF COUNTY JUDGES IN MAKING REPORTS
UNDER SECTION 23, CHAPTER 16,015, ACTS OF 1933, AND
FOR ADMINISTERING OATH AND AFFIXING SEAL.

Dear Sir:

I have your request for my opinion as to what fee a County Judge can charge an estate for making the report provided for under Section 23 of Chapter 16,015, Acts of 1933, and what fee he may charge for administering the oath and affixing his seal to Form C-601-B prescribed by you under the Act.

On July 26, A. D. 1934, I gave you my opinion (page 254, Biennial Report of the Attorney General, 1933-1934) that the only necessary and proper fees to be charged by the County Judge for making the reports required under Section 23 of the Act "appear to be the writing of such reports and entry on the probate docket. The charge for writing is fifteen (15¢) cents for the first 100 (100) words and ten (10¢) for the next or fractional part of one hundred (100) words. The charge for entry on the probate docket is twenty (20¢) cents. See Sections 5200 and 5237, Compiled General Laws of Florida, 1927.

If the County Judge administers the oath to an executor or administrator under your Form C-601-B, he may lawfully charge therefor the following fees:

Administering Oath	.10¢
Affixing his Seal	.10¢

See Sections 5200 and 5237, *supra*.

June 14, 1935.

SALARIES—COMPENSATION OF COUNTY JUDGE WHEN
TRANSFERRED TO ANOTHER COUNTY.

Dear Sir:

I have your letter of the 13th instant, requesting advice as to the compensation of a County Judge when transferred to another county.

There are two statutes relating to the subject of your inquiry. Chapter 8483, Acts of 1921, being Sections 5187 to 5189, Compiled General Laws of Florida, 1927, applies in cases of the disqualification of a resident County Judge. House Bill No. 205 of 1935 applies when the resident County Judge is incapacitated by reason of sickness.

COUNTY JUDGES

Your letter refers particularly to the assignment of Hon. _____, County Judge of Okeechobee County, to Martin County, under date of May 31, 1935. Copy of the assignment attached to correspondence indicates such assignment was made on account of the disqualification of the resident County Judge. Therefore, the compensation of County Judge transferred in said case would be governed by the provisions of Section 5188, Compiled General Laws of Florida, 1927, reading as follows:

"Any judge so transferred shall be entitled to the fees in said cause for services performed by him as are allowed by law, and in addition thereto his traveling expenses to and from the county to which he was transferred, and expenses not exceeding three dollars per day for board and lodging. Said expense shall be taxed as part of the costs in the case."

February 11, 1935.

SALARIES—FEES OF COUNTY JUDGE—CRIMINAL PROCEDURE

Dear Sir:

I am in receipt of your letter of the 30th ultimo, making inquiry if you have the right to retain your lawful costs as County Judge in a preliminary hearing where the defendant was discharged and in which you require prepayment of costs under Section 8490, Compiled General Laws of Florida, 1927, reading as follows:

"In all cases of justices of the peace and county judges in this State shall require payment in advance or security for costs of process service of the same and of examination, unless the party applying for a warrant shall make an affidavit of insolvency and of substantial injury, to person or property, by him suffered, in which case process shall issue without payment of costs."

Upon reading said Section it appears such costs are intended to cover "examination" as well as service of process. It, therefore, appears you are entitled to your costs as County Judge in such cases.

In this connection, however, I beg to say in a case of this kind the proper procedure would appear to be for the County Judge to turn over to the County all such costs so paid in advance or a sufficient amount of said payment to cover all costs in the case. The officer should then bill the County for payments to them as in other cases.

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COUNTY JUDGES

February 11, 1935.

COURTS—COUNTY JUDGE'S—WHETHER SAME IS COURT OF
RECORD (SECTION 5183, C. G. L., 1927.)

Dear Sir:

This acknowledges yours of the 6th inst., wherein you inquire whether or not the County Judge's Court is a Court of Record.

I beg to advise that under Section 5183, C. G. L., 1927, these courts are expressly made by statute Courts of Record.

December 2, 1936.

COUNTY JUDGE—JUSTICE OF THE PEACE— ENDORSEMENT
CRIMINAL WARRANT FROM ANOTHER COUNTY.

Dear Sir:

With your letter of November 28, 1936, you enclose a file which discloses the following:

On September 24, 1936, a warrant was issued by the Honorable ———, Justice of the Peace of the Tenth District of Duval County, Florida, attempting to charge one with knowingly and unlawfully uttering a certain worthless check as denounced and made punishable by Section 7923 of the Compiled General Laws of Florida, 1927.

It appears that the said warrant was forwarded by the Sheriff of Duval County to the Sheriff of Suwannee County, who in turn presented same to the County Judge of Suwannee County for endorsement to be executed in Suwannee County, and that the County Judge of Suwannee County refused to endorse same.

It also appears that you have been appealed to to see that the County Judge of Suwannee County performs his duties in respect to the matter stated. You thereupon request my opinion as to your authority in that connection.

Section 8321 provides that in all cases where a crime shall be committed in this State and a warrant shall issue to apprehend the offender, such process shall have the same force and effect in another County as it had or should have had in the County where it is issued, if it be endorsed by some Judge or Justice of the Peace living in said County.

I am of the opinion that this statute vests in the Judge endorsing such warrant the discretion of determining whether such warrant upon its face shows that a crime has been committed. If the warrant upon its face shows the commission of a crime, it is his duty to endorse same, but if it does not charge a crime, he may withhold his endorsement thereon.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
COUNTY JUDGES

It appearing from the files that the County Judge of Suwannee County has refused to endorse the warrant in question, the presumption is that he bases his refusal upon the failure of the warrant to charge the criminal offense attempted to be charged; and I am of the opinion based upon the warrant submitted, that such conclusion is correct.

Section 7923 of the Compiled General Laws of Florida 1927, makes it unlawful for any person to knowingly utter to another as good any check with knowledge at the time thereof that the drawer of such check is without sufficient funds on deposit with the drawee to insure the payment of the same upon presentation within reasonable time after negotiation. The warrant undertakes to charge the offense under this Section, and quotes therein as a part of the charge the check with the endorsements thereon, which show that the same was signed J. D. Clinton By: Pete Clinton, and the endorsements which are made a part of the charge show that payment was stopped by J. D. Clinton. It is then charged:

"he, the said Pete Clinton, then and there well knowing that he did not have sufficient funds on deposit with the drawee to insure the payment of said check upon presentation within a reasonable time after negotiation and which said check was dishonored and not paid upon due presentation to the said Commercial Bank of Live Oak, Live Oak, Florida."

It does not charge that J. D. Clinton, the party in whose name the check was drawn, did not have on deposit, but that he, referring to the defendant, Pete Clinton, did not have sufficient funds on deposit to insure payment of the check.

I merely point out these defects for the purpose of showing that the County Judge was justified in refusing to endorse the warrant for failure to charge the offense attempted to be charged.

It follows, therefore, that this is not a case where the Executive Department would be justified in directing a judicial officer as to how he shall exercise the discretion vested in him by Section 8321, Compiled General Laws.

I am returning the file of correspondence attached to your letter.

SECTION 8

JUSTICES OF THE PEACE

October 11, 1935.

COURTS—JUSTICE OF THE PEACE—CONTEMPT

Dear Sir:

I have your letter of the 9th inst., referring to Sections 4161 and 8206, Compiled General Laws of Florida, 1927, relating to contempt, which Sections read as follows:

4161. "Every Court shall have power to punish contempts against it, but the punishment imposed by a justice of the peace shall not exceed twenty dollars fine or twenty-four hours imprisonment."

8206. "A committing magistrate, while holding any examination, shall have the same power to punish for contempts as he possesses while presiding at the trial of any criminal cause."

You make inquiry if a Justice of the Peace Court has power to punish for contempt against it in counties having a criminal court.

In reply I beg to say in my opinion a Justice of the Peace does have power to punish for contempt in counties having a criminal court when acting as a committing magistrate notwithstanding the fact that he has no criminal jurisdiction to try criminal cases in such counties.

January 17, 1935.

JUSTICE OF THE PEACE, CORONER

Dear Sir:

Replying to your favor of January 16th., I would state that if the County Commissioners of Union County have complied with the provisions of Section 5212 of the Compiled General Laws in annexing Justice of the Peace District No. 2 to District No. 1, of which you are Justice of the Peace, your jurisdiction would extend to all territory embraced in former District No. 2, the same as it does to District No. 1.

Relative to Section 8519 of the Compiled General Laws of 1927, permit me to say: The Section is quite clear and definite. In other words, under the provisions of the Section, the Justice of the Peace of the District is the Coroner of his District and "shall hold inquest of the dead" where an inquest is necessary, and where the body of the dead person is found in his District.

JUSTICES OF THE PEACE

"In case the Justice of the District in which the death occurs shall for any reason be unable to hold an inquest, it shall be held by the County Judge or by a Justice of the Peace of one of the adjoining districts of the county".

Should you desire further information on this subject, permit me to suggest that you consult the State Attorney and the Attorney to the Board of County Commissioners.

June 18, 1935.

JUSTICE OF THE PEACE—JURISDICTION—CIVIL PROCESS

Dear Sir:

I have your letter of the 14th instant referring to my letter of the 23rd ultimo, in which I quoted a part of Section 4238, Compiled General Laws of Florida, 1927.

Section 4238 is a part of Article V under the caption "Process, by whom served". This Section does not appear to have any relation to the jurisdiction of your Court.

Answering your specific inquiry as to whether or not civil process issued by the Justice of the Peace Court may be served in a County other than that in which the Justice's district is located, I beg to say I find no statute authorizing such service.

For your further information in this connection your attention is called to the form of summons for Justices of the Peace prescribed in Section 5252, Compiled General Laws of Florida, 1927. You will note in such form that summons is directed to the Sheriff or any Constable of said County. Your attention is further called to the case of Phillips, County Judge, et al. vs. State, ex rel. Dorner, 75 Fla. 93, 77 So. 665, relating to the County Judge's Court, the two headnotes of which read as follow:

1. "The established principle is that a court created within and for a particular territory is bound in the exercise of its powers by the limits of such territory, and that no judicial process, whatever form it may assume, can have any lawful authority outside of the limits of the jurisdiction of the court or judge by whom it is issued.
2. "There is no statutory authority in this state for the service of a writ of summons issued from a county judge's court in a civil case upon a sole defendant outside of the limits of the territorial jurisdiction of the court issuing it, and therefore the service of such process beyond the territorial jurisdiction of such court gives to the court no jurisdiction over such defendant."

JUSTICES OF THE PEACE

In view of the above it does not appear that civil process issued by a Justice of the Peace may be served in a county other than that in which the Justice is situated.

June 27th., 1935.

JUSTICE OF THE PEACE, PROCESS, SERVICE BY WHOM

Dear Sir:

Replying to your favor of June 25th., permit me to say the Sheriff, his Deputies or any Constable of the county may serve process for your court. When the Sheriff, his Deputies and Constables are unable to act and the Judge appoints a person under the provisions of Section 8294 of the Compiled General Laws, it is my opinion that the person appointed will receive the same compensation and be paid in the same manner as the regular Constable of the district would be paid if he were performing the service.

March 18, 1935.

CRIMINAL PROCEDURE—JUSTICE OF THE PEACE—JURISDICTION
BEYOND DISTRICT

Dear Sir:

I am in receipt of your letter of the 14th instant, making inquiry if a Justice of the Peace has the right to issue a warrant for the arrest of an offender when the crime charged was committed in another District than that of the Justice.

In reply I beg to say I do not know of any statute authorizing Justices of the Peace to issue warrants in cases of offences committed beyond the boundaries of their District, except Section 8319, Compiled General Laws of Florida, 1927, in cases where there shall be reasonable ground to apprehend the escape of the offender.

March 6, 1935.

CRIMINAL PROCEDURE, JURISDICTION OF JUSTICE OF PEACE
AND COUNTY JUDGE IN LIQUOR VIOLATIONS

Dear Sir:

I am in receipt of your letter of the 5th instant, making inquiry with reference to your jurisdiction as Justice of the Peace in case of drunkenness.

JUSTICES OF THE PEACE

In reply your attention is called to Article V. Section 22 of the State Constitution, which provides that the Justice of the Peace shall have jurisdiction in such criminal cases, except felonies, as may be prescribed by law. Your attention is further called to Section 8289, Compiled General Laws of Florida, 1927, which provides that in counties where there are no County Courts or Criminal Courts of Record, Justices of the Peace shall have power to hold a Court to try and determine all misdemeanors committed in their Justice District punishable by fine not exceeding \$500.00 or by imprisonment not exceeding six months, or by both such fine and imprisonment. Your attention is also called to Section 8290 of the same compilation, which provides that in counties where there are County Courts Justices of the Peace shall have power to try and determine all misdemeanors committed in their respective Districts punishable by fine not exceeding \$100.00 or by imprisonment not exceeding three months, or by both such fine and imprisonment.

I am enclosing herewith copy of a letter from this office, under date of February 21, 1935, to Hon. Jno. P. Harrell, Sheriff Washington County, Chipley, Florida, with reference to drunkenness and referring to Section 7616, Compiled General Laws of Florida, 1927, making it unlawful for any person to become or be drunk or intoxicated, and also referring to Section 3549 of the General Statutes of 1906 providing a penalty for one guilty of drunkenness by the voluntary use of intoxicating liquors. My views as to the application of said Sections on the subject of drunkenness are expressed therein. In this connection, your attention is called to Section 7631 which provides that a County Judge shall have exclusive jurisdiction of all criminal proceedings for first offense under the Article of which Section 7631, as well as Section 7616, forms a part.

March 8, 1935.

FEES OF COMMITTING MAGISTRATES

Dear Sir:

I am in receipt of your letter of the 5th instant, relating to fees of a Justice of the Peace as a committing magistrate.

In reply I refer you to Sections 2833 and 8488, Compiled General Laws of Florida, 1927, providing when a committing magistrate holds to bail or permits any person to answer to a criminal charge in a County Court, a Criminal Court of Record or a Circuit Court and any information is not filed nor indictment found against such person the cost of such committing trial shall not be paid by the County except the costs for executing the warrant.

Your attention is also called to Section 8490 of the same compilation, which requires Justices of the Peace and County Judges to require

JUSTICES OF THE PEACE

payment in advance for security for costs of process, service of same and of examination unless the party applying for a warrant shall make an affidavit of insolvency and of substantial injury to person or property by him suffered, in which cases process shall issue without payment of costs. Under the above mentioned Section 8488, you will note that only the costs for executing the warrant are allowed in such cases when no indictment or information is filed.

November 10, 1936.

JUSTICES OF THE PEACE—INTERPRETATION OF SECTIONS 8488
AND 8490, COMPILED GENERAL LAWS OF FLORIDA—WHAT
CONSTITUTES TERM OF COURT

Dear Sir:

This is in reply to your letter of September 9, in which you request my opinion as to certain matters specifically stated therein. The State Auditor has requested my opinion as to these identical questions but in the interests of clearness, it is best to reply to the questions in the order and form propounded in your letter.

You state the following questions involving the interpretation of Sections 8488 and 8490, Compiled General Laws of Florida:

"(A) Complainant appeared before me and swore out warrant for an arrest. Before issuing warrant, I required Complainant to give bond to secure costs. Defendant was arrested and given a hearing before me. I bound him over to the County Court. No information was filed in the case, but I billed the County for my costs on the ground that the County was protected by the bonds for costs; that the bond became collectable when no information was filed at the ensuing term of the County Court; and that the collection of the bond, being beyond my control, could not affect my right to bill the County. Is my position correct?

"(B) Complainant appeared before me and swore out a warrant for an arrest. Complainant was unable to give bond to secure costs, but took an oath of Insolvency for the purpose of securing the warrant. Defendant was arrested and given a hearing before me. I bound him over to the County Court. No information was filed. I billed the County for my costs. Is my position correct?

"(C) Defendant was arrested and, at a hearing before me, plead guilty and was bound over to the Circuit Court. No information was filed and no indictment was found. I billed the County for my costs, on the ground that following a plea of guilty, I had no option but to bind him over. Is my position correct?

"(D) At a hearing given a defendant before me, the County Prosecutor was present and requested that defendant be bound over to County

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Court. I did so, but later County Prosecutor changed his mind and did not file information. Am I entitled to my costs?"

Answering question designated "(A)", it is my opinion that you as Justice of the Peace cannot collect costs from the County under the circumstances stated. If the County should collect the amount of the costs on the bond, you would be entitled to the proceeds of such collection, but you would not be entitled to collect the same from the County as such.

Answering the question designated "(B)", it is my opinion that under the circumstances stated, you would not be entitled to recover costs from the County.

Answering question designated "(C)", it is my opinion likewise that you would not be entitled to recover costs from the County. Your inquiry designated "(D)" must also be answered in the negative.

My opinion on the above designated questions is based upon Section 8488, Compiled General Laws of Florida, 1927, which reads as follows:

"8488. (6174.) County not to pay costs in cases where information is not filed or indictment found.—Whenever a committing magistrate holds to bail or commits any person to answer to a criminal charge in a county court, a criminal court of record, or a circuit court, and any information is not filed nor an indictment found against such person, the costs of such committing trial shall not be paid by the county, except the costs for executing the warrant."

Section 8488, above set forth, was contained in the Revised General Statutes of Florida, 1920, as Section 6174, thus disclosing the intent of the Legislature to place this section on equal footing with Sections 8488 and 8490, Compiled General Laws of Florida (Sections 6175 and 6176, Revised General Statutes). Section 8488, Compiled General Laws, contains no exceptions and applies in all cases when an information is not filed nor an indictment found, regardless of attending circumstances. See the case of Barrow et al. vs. State, reported in 82 So. 293.

In construing Section 8490, Compiled General Laws of Florida, it is interesting to note that the Supreme Court has held that said section does not apply to crimes of a public, as distinguished from a private, nature. See the case of Osceola County vs. State, 155 So. 119, and the case of Simmons et al. vs. State, 71 So. 278. These cases, however, provide no exception to the interpretation which I have hereinabove given in regard to Section 8488, Compiled General Laws of Florida.

You further inquire whether you, as Justice of the Peace, have a right to recall a defendant for a re-hearing and dismiss the case upon ascertaining additional facts, before an information is filed or an indictment found, when you have previously conducted a hearing and

JUSTICES OF THE PEACE

bound the defendant over to a higher court. It is my opinion that the matter is concluded when you make the order binding over the defendant. It is not incumbent upon you as Justice of the Peace to determine the guilt of the defendant beyond a reasonable doubt, but only to determine whether or not there is sufficient evidence to bind the defendant over for trial in another tribunal. When you have done this you have exhausted your jurisdiction as a committing magistrate.

You further inquire what constitutes a term of the justice court. I quote Sections 5214 and 5215, Compiled General Laws of Florida:

"5214. (3361.) Terms.—Trial terms of such court shall be held on such day as the judge or justice thereof shall designate therefor in the manner provided in the next section. (Revised by Ch. 1438, Acts 1895, § 2.)

"5215. (3362.) Written notice to be given.—Whenever the day of trial term shall be fixed upon for any such court by the judge or justice thereof, written notice of the same shall be made and given by such judge or justice to (and filed in the office of) the clerk of the circuit court of the county."

It clearly appears from the statutory provisions last hereinabove quoted that the term of the justice of the peace court is not continuous but that the day designated for the trial term constitutes the term, insofar as it affects the power of the justice to alter the terms of a judgment entered by him. The general rule would apply that a court has no more control over its judgments after the term of court expires, except to correct simple clerical errors and mistakes.

SECTION 9

SHERIFFS

March 27th, 1936.

SHERIFF COSTS, CONSTRUCTIVE MILEAGE PROHIBITED.

Dear Sir:

Replying to your favor of March 25., permit me to say, Section 492 of the Compiled General Laws of 1927 reads as follows:

"CONSTRUCTIVE MILEAGE NOT TO BE CHARGED.

"No Sheriff, Constable or Coroner shall charge constructive mileage. The mileage charged for must be actually travelled by the nearest and most direct route by the public highway."

In view of the provisions of the Section quoted above permit me to say, that where a Sheriff has several papers to serve in a town within the county, but distant from the Court House, and where the Sheriff maintains a branch office in the said town distant from the Court House, the Sheriff could legally charge mileage from the Court House to the place where the process is to be served; however, the Sheriff should not charge mileage from the Court House to the place of service and return on each paper served, but should prorate the mileage charge on the several papers served.

March 26, 1936.

SHERIFF AND CONSTABLES. ARRESTS—BAIL BOND.

Dear Sir:

Replying to yours of March 17th., permit me to say:

When an officer arrests a person for violation of any penal law of this State, the person should be taken by the officer before a Magistrate, and if the offense be not such as the Magistrate may hear and determine, the Magistrate should proceed to ascertain whether there is a good ground to hold the accused to bail. See Section 8328, Compiled General Laws of 1927.

Where the arrest is made upon a warrant, the accused should be taken before the Court from which the warrant issued.

In the case of DIXON, et al. -vs- STATE, 101 Fla. 840; 132 So. 684, the Supreme Court of Florida in its opinion said:

"If in making an arrest without warrant, an officer, through error, mistakes the facts and exceeds his authority, *and there*

SHERIFFS

is coupled therewith negligence or carelessness whereby serious injury results to an innocent person, he becomes thereby lawfully accountable."

From what the Court said in the opinion from which we have quoted above, it appears that an officer who makes an arrest where he has reason to believe the person arrested is violating a penal Statute, the officer would not be held accountable even though he was mistaken regarding the facts and exceeded his authority, unless injury resulted to the person arrested because of *negligence or carelessness* of the arresting officer.

The fact that a person is hauling perishable goods in violation of the law, and his arrest and detention for failure to make adequate bond for his appearance might cause deterioration of the goods being hauled, does not render the accused immune from arrest or detention until he has made bail for his appearance in Court.

October 11, 1935.

PAYMENT OF SHERIFF'S FEES FOR ATTACHING AND SELLING
CROSS TIES CUT FROM LAND TO WHICH THE
STATE HOLDS TAX SALE CERTIFICATE.

Dear Sir:

Replying to your request for an opinion on this subject, it is my opinion that the costs should be paid from the proceeds of the sale and the net proceeds then applied as a credit on the tax sale certificate held by the State. However, since the sheriff has no authority to pay his own costs out of the funds in his hands derived from such sale, he should report and account for the gross proceeds, and in turn his costs lawfully taxed should be paid therefrom.

January 5, 1935.

SALARIES—FEES OF SHERIFF FOR TRANSPORTING GIRLS TO
FLORIDA INDUSTRIAL SCHOOL FOR GIRLS.

Dear Sir:

I am in receipt of your letter of the 31st ultimo, enclosing three accounts against the State of Florida by Sheriff of Washington County, each of which accounts is for expenses per diem and guard hire in connection with transporting girls to the Florida Industrial School for Girls at Ocala. You request my opinion as to whether these bills should be paid by the State of Florida.

In reply your attention is called to Sections 8631 to 8661, Compiled General Laws of Florida, 1927, with reference to Florida Industrial School

SHERIFFS

for Girls. You will note that Section 8632 provides for girls guilty of certain offenses to be committed to the Florida Industrial School for Girls under form of practice and procedure whereby boys are sentenced to Florida Industrial School for Boys, and also provides that delinquent and dependent children under Sections 3684 to 3715, Compiled General Laws of Florida, 1927, may be committed to the Florida Industrial School for Girls in like manner as boys are now committed to the Florida Industrial School for Boys. It, therefore, becomes necessary to take notice of the statute providing for the commitment of boys to the Florida Industrial School for Boys.

Your attention is called to Section 8649, Compiled General Laws of Florida, 1927, reading as follows:

"The actual expenses shall be allowed to the sheriffs of the several counties of the State for services of taking such offenders to said Florida Industrial School for Boys, and such fees shall be paid by the county in the same manner as now provided by law."

Your attention is further called to Section 4538 of the same Compilation, which provides for certain fees to the Sheriff for commitment of boys and girls to Industrial Schools, and also provides that "the State will furnish transportation."

Since no State appropriation has been made for the payment of transportation in such cases, this office has been holding and now holds that the Sheriff must be paid by the County under the provisions of Section 8649, above quoted, which Section you will note provides only for the payment of the actual expenses.

Enclosed find the said bills returned herewith.

February 13, 1935.

SALARIES—MILEAGE FEES OF SHERIFF AND DEPUTY

Dear Sir:

I am in receipt of your letter of the 26th ultimo, in which you state there seems to be some who think that a Sheriff, when taking a deputy with him to arrest a prisoner or to bring a prisoner from some other jail, is entitled to mileage for himself and also his deputy, together with the mileage of the prisoner.

In reply to your inquiry, I beg to say in my opinion the Sheriff would not be entitled to mileage for his deputy in such a case.

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SHERIFFS

January 24, 1935.

~~SALARIES—SHERIFF—JAILER—GUARDS~~

Dear Sir:

I am in receipt of your letter of the 17th instant, making inquiry if your Board of County Commissioners is authorized to pay to the Sheriff each month a fixed salary for the position of jailer.

In reply your attention is called to Section 2838, Compiled General Laws of Florida, 1927, providing certain fees for feeding prisoners. In this connection, your attention is also called to the case of Hillsborough County Commissioners vs. Jackson, 58 Fla. 210, 50 So. 423, holding that this Section prevails over Section 8544 containing different provisions with reference thereto.

I find no statute authorizing the payment of a fixed monthly salary to the Sheriff as jailer. Your attention is called, however, to Section 4588, Compiled General Laws of Florida, 1927, prescribing various fees to the Sheriff, among which you will find the following: "Guards, not more per day than \$2.00". I understand this statute to mean that where a Sheriff employs a guard at the jail, he is entitled to reimbursement for such guard at the rate of not more than \$2.00 per day. In order to entitle the Sheriff to this reimbursement he must actually hire the guard and the County Commissioners must be satisfied that the guard was employed and paid for the service for which the compensation is claimed. There is nothing in the statute to indicate the Sheriff is allowed \$2.00 per day for the hire of a guard when no such guard has been hired. The allowance is for expense of the Sheriff in keeping a guard and it is fixed at not more than \$2.00 per day, which means that if the Sheriff hires a guard at \$1.00 per day he can only receive reimbursement for what he actually pays out to the guard. The necessity for employing a guard is a matter which must be determined by the Sheriff as the Sheriff is held accountable for the custody of the prisoners in jail and even though it may seem to the County Commissioners that hiring a guard is unnecessary, yet if the Sheriff believes that such a guard is necessary and employs such guard, he is entitled to have the guard in accordance with the statute.

Jails containing prisoners should never be left without some one being on hand, not only for the purpose of seeing that such prisoners do not escape but for the purpose of being present in case of fire or of sudden illness among the prisoners.

SHERIFFS

January 4, 1935.

SHERIFFS, FEES TRANSPORTING BOYS TO INDUSTRIAL SCHOOL

Dear Sir:

Retel relating to fees of Sheriff for carrying boy to Reform School stop You are advised that no State appropriation has been made for transportation under Section Forty-five Eighty-eight and payment must be made under Section Eighty-six Forty-nine which provides for payment of actual expenses by the County.

October 22, 1936.

SHERIFF'S FEES

Dear Sir:

I have your letter of the 9th inst., in which you ask the following questions:

1. Is my office entitled to all the fees of State and County traffic officers, or to part of these fees, or none? Also is my office entitled to per diem for attending Court in these traffic cases?

2. Occasionally the traffic officer brings in a case not involved in traffic work, such as intoxication. Am I entitled to fees, or part fees, or none in these cases?

3. In cases where I send any traffic officer to look after other matters and arrests are made not involving traffic regulations, am I entitled to fees, or part fees, or none?

Answering Question 1:

It is my opinion that you are entitled to the fees of the State traffic officer but not the fees of the County traffic officers.

Section 2882, Compiled General Laws of Florida, 1927, provides for the fees and fines of the County traffic officer to go on conviction into the Fine and Forfeiture Fund of the County.

Section 2879, Compiled General Laws of Florida, 1927, provides that it shall be unlawful for a County traffic officer to charge, collect, or receive any compensation other than his monthly salary as provided by said Act.

Both the State traffic officers and the County traffic officers are deputized by you. There is no prohibition as to the fees of a State traffic officer and, under the agreement which you have with the director in charge of the State Department, you have charge of the work of these State traffic officers. It is my opinion, therefore, that you are entitled to the fees accruing for the arrests which they make.

SHERIFFS

Where your attendance, either personal or by deputy, is reasonably necessary in traffic cases, it is my opinion that you are entitled to per diem for attendance in the traffic cases, other than when you are represented by the County traffic officer, in which event you could secure no per diem through his attendance.

Answer Question 2:

Where the traffic officer, either County or State, handles work other than traffic work, such as intoxication, etc., you are entitled to full fees for their services.

Answering Question 3:

It is my opinion that you are entitled to fees where you send your traffic officers to look out after other matters and arrests are made. This question is really answered in the above questions.

SECTION 10

CONSTABLES

May 21, 1935.

CONSTABLES, SALARIES, BUDGETS

Dear Sir:

I have your letter of the 7th instant stating that the County Commissioners of your County have advised that they cannot pay any further costs to you as Constable on account of the fact that the budget does not provide a sufficient amount to allow them to pay you any further fees during the remainder of the year. You make inquiry if you can not legally obtain costs or fees which are paid by the defendants in cases, in which you make the arrest or attend Court.

In reply I beg to say that it is contemplated that all fines or other costs collected from defendants should be paid into the County Treasury and not held out by officers collecting the same for fees that might be due them. Your attention is further called to Section 2306, Compiled General Laws of Florida, 1927, as amended by Chapter 16,286, Acts of 1933, with reference to County Budgets. This statute provides that the adoption of estimates by the Board shall give the same "the force and effect of fixed appropriations, and the same shall not be altered or amended or exceeded."

Under this situation I see no authority for the Board to make payments beyond the specific budget item unless there are sufficient funds in the contingent item of the budget to take care of such payments.

April 26, 1935.

CONSTABLE—TERRITORIAL POWERS—APPROVAL AND
ACCEPTANCE OF BOND*Dear Sir:*

I am in receipt of your letter of the 23rd with reference to commitment and release fees of a Constable and with reference to accepting bonds from prisoners and the territorial powers of a Constable. Answering your first inquiry with reference to commitment and release fees, I am sending you, under separate cover, copy of the last Biennial Report of this office and refer you to pages 262 and 266.

Your second question relates to your power to accept bonds from prisoners. In this connection it must be borne in mind there are several kinds of bonds that may be taken in a criminal case. For example, there is an appearance bond which is taken by a Sheriff or Constable

CONSTABLES

when he arrests a prisoner, which bond is conditioned for his appearance before the Justice of the Peace for hearing or trial. In the case of *Ex Parte Hatcher*, 86 Fla. 330, 98 So. 72, our Supreme Court held that it was the right of a prisoner when taken into custody on process to give bail for his appearance. If the arresting officer is a Constable who is serving the warrant, it is the duty of such Constable to take bond from the prisoner he arrests and before he can take bond, he must, of course, approve the same. In such situations the Constable is not only authorized to take and approve such bond, but is entitled to the regular fee for such service. This refers only to the original bond which the prisoner gives when he is first arrested. This is the only bond which the Constable would be authorized to take and approve.

Your third question is as to whether or not you are authorized to serve process from the Justice of the Peace Court of which you are Constable anywhere in the county under the provisions of Section 4595, Compiled General Laws of Florida, 1927. In reply I beg to say in my opinion you are authorized to serve such process anywhere in the county and that you are entitled to the regular fees for such service. In the case of service of process for a Justice of the Peace of another District, your mileage fees would be limited to what they would be if the writ was issued by the Justice of the Peace of his own District.

February 13, 1935.

PROCESS—SERVICE BY CONSTABLE

Dear Sir:

I am in receipt of your letter of the 25th ult., making inquiry if a Constable can legally serve process in chancery or civil actions in a Circuit Court in the jurisdiction in which such Constable is authorized to act.

In reply your attention is called to Section 4869, Compiled General Laws of Florida, 1927, which provides that "the Sheriff of the county shall be the executive officer of the Circuit Court of the County." This statute was originally passed in 1845.

Your attention is further called to Section 4238, Compiled General Laws of Florida, 1927, reading as follows:

"All process, except that issuing from a justice of the peace court, shall be served by the sheriff or *any constable* of the county *in the district* in which it is to be served. Process of a justice of the peace court may be served by a sheriff of the county or by a constable. A justice of the peace, or a constable, in the respective counties, may serve all process in cases where the

CONSTABLES

sheriff is interested, and in case of necessity, the judge of the circuit court may appoint an clisor to act instead of the sheriff."

"All writs or process issued upon the institution of a suit which may be begun in a county where the defendant does not reside, and all writs, process, or notices requiring service upon a defendant not in the county where the suit is pending, may be served by the sheriff of the county *or the constable of the justice district* in which the defendant is to be found."

This Section was also originally passed in 1845, but has since been twice amended. It was last amended by Chapter 9318, Acts of 1923. In the above quotation I have underscored the words added to said Section by the last amendment.

Under Section 4238, above quoted and as last amended, it appears that a Constable may serve process in chancery or civil actions in a Circuit Court in the jurisdiction in which such Constable is authorized to act. The Sheriff or his Deputy, however, would appear to be more properly the executive officers of the Circuit Court for the service of process from said Court.

SECTION 11

CRIMINAL COURTS

September 4, 1935.

COUNTY OFFICERS—CLERK CRIMINAL COURT APPROVING
BAIL BONDS*Dear Sir:*

I acknowledge receipt of your letter of the 31st ultimo, enclosing letter from the Honorable _____ to Governor Sholtz., under date of August 29th, requesting an opinion as to whether or not a Clerk of the Criminal Court of Record of Dade County, Florida, would be protected by the provisions of Chapter 13988, Laws of Florida 1929, in accepting and approving bail bonds. I note that Mr. _____ raises a question as to whether or not the Chapter above referred to is in contravention of Article III of Section 20 of the Constitution of Florida.

The Clerk of the Criminal Court of Record performing ministerial duties has no power to question the constitutionality of an Act, and would be protected in his acts performed in good faith thereunder.

This office has no authority to pass upon the constitutionality of an Act, this question being one for the consideration of the Court when presented by a proper case.

It is my opinion that the Clerk of the Criminal Court of Record of Dade County, Florida, would be protected in accepting and approving bonds under the provisions of Chapter 13988, Laws of Florida, Acts of 1929.

August 22, 1935.

CLERKS OF COURTS—AUTHORITY TO HONOR REQUISITION OF
SUCCESSOR TO DEFAULTING CLERK REGARDING PAYMENT
OF JURORS' FEES—SECTIONS 4479 ET SEQ. C. G. L. 1927*Dear Sir:*

This acknowledges receipt of your communication of August 19, 1935, in which you enclose a letter from the Honorable _____, Clerk of the Criminal Court of Record of Dade County.

We understand the facts to be as follows:

The prior incumbent received, pursuant to the provisions of Sections 4479 et seq. C. G. L. 1927, advances by you on the following dates for the payment of jurors' fees in the courts noted and in the following amounts:

CRIMINAL COURTS

April 13, 1935—Criminal Court of Record	\$2500.00
May 8, 1935—Civil Court of Record	1500.00
May 8, 1935—Court of Crimes	1500.00
Total	\$5500.00

The moneys so received were deposited in the account of the said predecessor as Clerk in the First National Bank of Miami.

Shortly thereafter the said predecessor disappeared and an audit of his office has revealed that in the courts noted, for the terms specified, the following number of jurors have as yet received no pay:

Number	Court	Term
114.....	Criminal Court of Record	April & first part of June
30.....	Court of Crimes	May
42.....	Civil Court of Record	May

Prior to his disappearance, the said predecessor had issued his requisitions for the payment of the following number of jurors in the courts and for the terms and in the amounts specified, to-wit:

Number	Court	Term	Amount
12—	Civil Court of Record	May.....	\$ 213.70
32—	Criminal Court of Record	April.....	304.80
30—	Court of Crimes	May	375.30
30—	Civil Court of Record	May.....	417.35
104			\$1,311.15

The said \$1,311.15 had, of course, been received from you on advances made under the statute, but had not as yet been disbursed when, upon the disappearance of the said prior incumbent, the Board of County Commissioners notified the First National Bank of Miami, as the depository, to honor no more requisitions or checks against the moneys on deposit.

It also appears that the moneys in the First National Bank amount to approximately \$3,500.00 to the credit of the said prior incumbent as such clerk, and that the same are being held under three separate writs of garnishment.

The question you propound is whether or not your office should honor requisitions from the present clerk for the payment of these fees due to the jurors serving as aforesaid.

It is my opinion that the fees having been rightfully earned under the statutes fixing the compensation of jurors, said jurors are entitled to be paid; and that if there is any loss, it must be the loss of the State and not of the juror. It is my further opinion that the present incumbent is under a continuing duty to send in the necessary requisitions to procure the funds with which to pay these unpaid jurors their just fees and that you may, therefore, honor such requisitions.

SECTION 12

COUNTY PLANNING BOARDS

July 9, 1936.

COUNTY PLANNING COUNCILS—SUSPENSION OF MEMBERS—
GROUNDS*Dear Sir:*

In your letter of the 7th instant you refer to Section 8 of Chapter 17275, Laws of Florida, Acts of 1935, which provides for the creation of County Planning Councils, and ask to be advised as to your authority to remove or suspend either the ex officio members or the members appointed by you.

The members of the County Planning Councils are officers and as such are subject to be suspended from office by the Governor for any of the causes enumerated in Section 15 of Article IV of the Florida Constitution. This applies to the ex officio members as well as those appointed by the Governor. They may be removed by the Governor only by and with the consent of the Senate.

August 29, 1936.

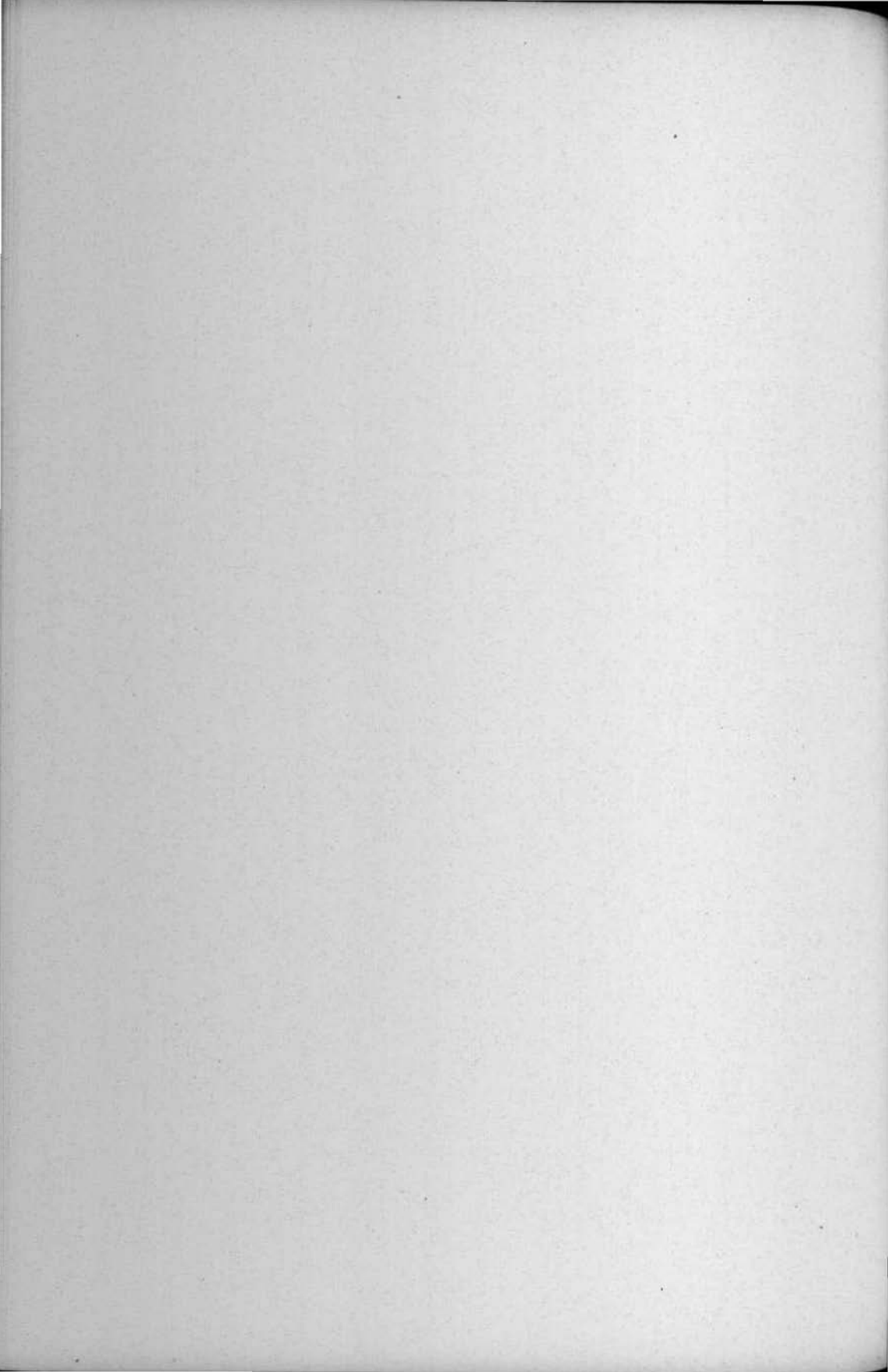
COUNTY PLANNING COUNCILS—EXPENSES

Dear Sir:

Your letter of August 25, 1936, requests me to advise whether County Commissioners of the various counties of this state, in which County Planning Councils have been created, may properly make provision, in the respective county budgets, for the work of said councils.

These County Planning Councils are provided for by Chapter 17275, Laws of Florida, Acts of 1935, in Section 8 thereof. That section provides for the formation of such councils; their composition; that members thereof serve without compensation or expense allowance; but goes on to provide that they "may employ such assistance as is necessary in preparing the necessary data and reports, if the funds for the payment of the same are made available by appropriation or gift."

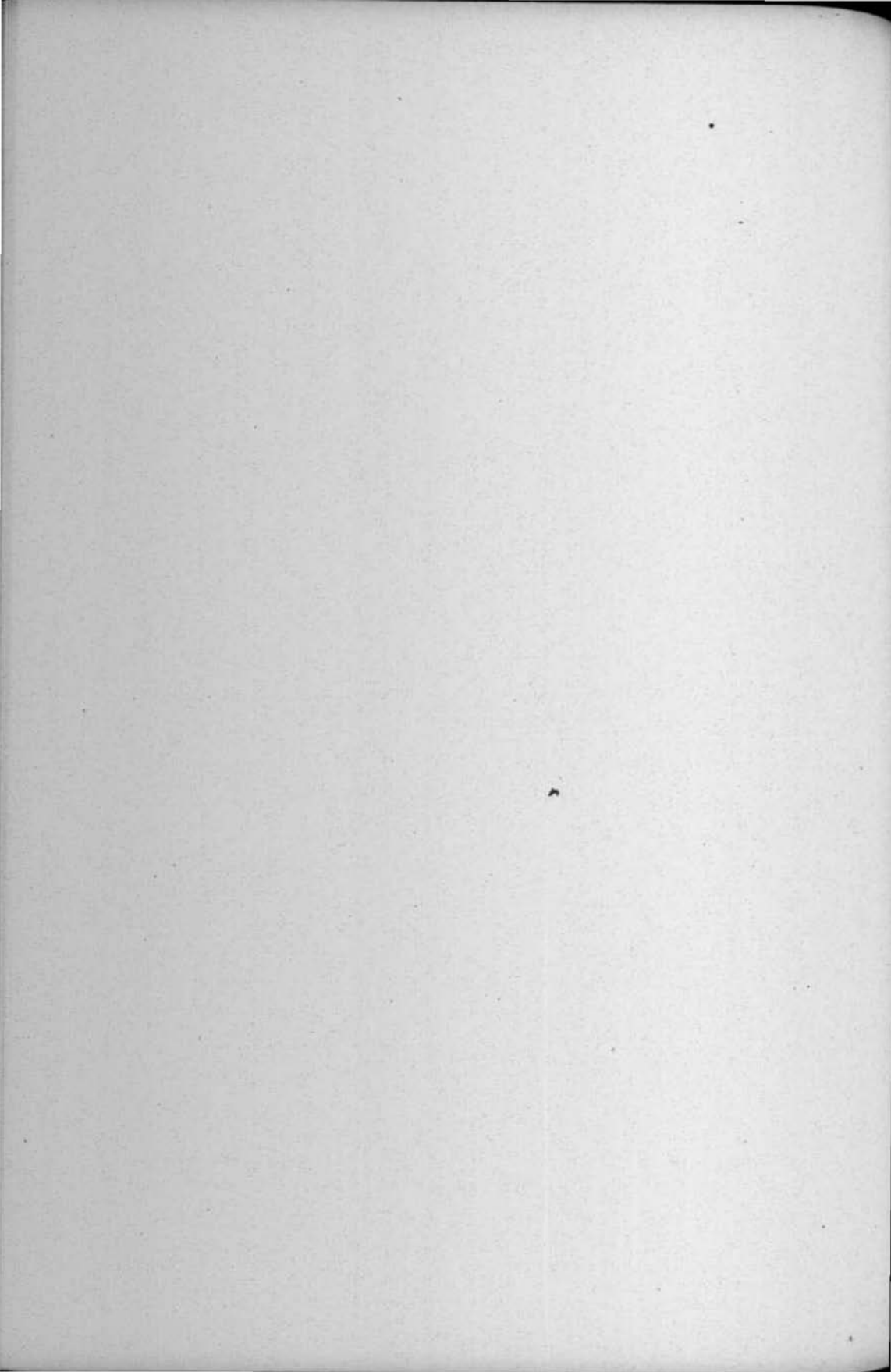
It certainly appears from this language, that Section 8 contemplates that an appropriation may be made for the purpose indicated. I am, therefore, of the view that within the limitations provided by law, as to maximum millages which may be levied for particular purposes, County Commissioners of a county in which such a County Planning Council exists, may make an appropriation for the employment of the assistance referred to in said Section 8. If this were not so, it would seem that such Council might find itself in a position where it would be unable to carry out its statutory duties. You will note, however, that such employment by said Council, is not authorized until the funds for the payment of the same, are actually made available by appropriation or gift.



CHAPTER IV.

BANKS AND BANKING

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BANKS AND BANKING

SECTION 1

NATIONAL BANKS

NO CORRESPONDENCE

SECTION 2

DEPOSITORY OF PUBLIC FUNDS

July 9, 1936.

BANKS—SECURITIES FOR PUBLIC DEPOSITS

Dear Sir:

With your letter of July 8, 1936, you submit City of Pensacola 4% Water Revenue Certificate No. 43, par value \$1,000, and request my opinion as to whether the same is eligible as security for the deposit of the monies of the State in Banks.

Section 173 of the Compiled General Laws of Florida 1927, authorizes the Governor, Comptroller, and State Treasurer to deposit subject to call the monies of the State in such banks in the State as will offer the best inducements as to interest and security.

Section 174 provides that the security to be given by such banks shall consist of bonds of the United States and bonds of the several States, county and municipal bonds and county or county school time warrants. It is my opinion that the Legislature intended this provision to apply in the case of bonds to such bonds only as have for their security the pledge of the general taxing power of the Government issuing same.

The certificate submitted with your letter as herein referred to does not have back of it, as a pledge for its payment, the taxing power of the City of Pensacola, and it is therefore my opinion that said certificate does not come within the contemplation of Section 174 of the Compiled General Laws of Florida, 1927.

I have personally returned to you the said City of Pensacola 4% Water Revenue Certificate No. 43, par value \$1,000.00.

DEPOSITORY OF PUBLIC FUNDS

May 28, 1935.

BANKS, EXEMPTION FROM SECURITY FOR CERTAIN DEPOSITS,
CHAPTER 16798 OF 1935*Dear Sir:*

In your letter of the 25th instant you refer to Senate Bill 194, Acts of 1935, and ask whether it is now necessary for the Board of Control to require banks to give security for funds belonging to the institutions under its management, when deposited in the banks of this State.

As I construe Senate Bill 194, it applies to all public funds of the State and every agency thereof, and also to the counties and districts when such funds are deposited in banks, which are Class A stockholders in the Federal Deposit Insurance Corporation, and relieves the State and its officers and agencies, and also the counties and districts from requiring security for such deposits up to the amount that the deposits of such banks are insured for in the Federal Deposit Insurance Corporation.

Any deposit in excess of the amount insured by the Federal Deposit Insurance Corporation should be protected as required by law, notwithstanding the provisions of Senate Bill 194.

February 1, 1935.

BANKS—DEPOSIT OF PUBLIC MONEYS—SECURITY ACCEPTABLE—
FEDERAL FARM MORTGAGE CORPORATION BONDS—HOME
OWNERS' LOAN CORPORATION BONDS—SECTION 174,
COMPILED GENERAL LAWS 1927, SECTION 2470(17)
COMPILED GENERAL LAWS 1927, 1934 SUPPLEMENT*Dear Sir:*

This is in response to your communication of January 31, 1935, wherein you ask whether or not bonds issued by the Federal Farm Mortgage Corporation and bonds of the Home Owners' Loan Corporation, may be pledged as security for the deposit of State and County funds in your custody.

Section 174, Compiled General Laws of 1927, provides in part as follows:

"The security to be given by such banks as may be designated * * * shall consist of bonds of the United States, and the bonds of the several States * * * etc."

Section 2470(17), Compiled General Laws of 1927, 1934 Supplement, being Section 17 of Chapter 14486, Acts of 1929, commonly known as the Board of Administration Act, provides in part as follows:

DEPOSITORY OF PUBLIC FUNDS

" * * * . Each bank receiving any portoin of the said funds shall be required to deposit with the State Treasurer satisfactory bonds or treasury certificates of the United States * * * , which shall be equal to the amount deposited with said bank. * * * etc."

The provision with reference to the bonds of the Home Owners' Loan Corporation as finally amended by Act of June 27, 1934, c. 847, Section 506, (a), 48 Stat., now appearing as Title 12, Section 1463 (c), U. S. C. A. (July Cumulative Pamphlet), is as follows:

" * * * Such bonds shall be fully and unconditionally guaranteed both as to interest and principal by the United States, and such guaranty shall be expressed on the face thereof, and such bonds shall be lawful investments, and may be accepted as security, for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority or control of the United States or any officer or officers thereof. In the event that the Corporation shall be unable to pay upon demand, when due, the principal of, or interest on, such bonds, the Secretary of the Treasury shall pay to the holder the amount thereof which is hereby authorized to be appropriated out of any moneys in the Treasury not otherwise appropriated, and thereupon to the extent of the amount so paid, the Secretary of the Treasury shall succeed to all the rights of the holders of such bonds. * * * "

An identical provision with reference to the bonds is contained in the Federal Farm Mortgage Corporation Act, as amended by Acts of January 31, 1934, c. 7, Section 4 (a), 48 Stat. 345, and Act of April 27, 1934, c. 168, Section 14, 48 Stat. 647, now appearing as Title 12, Section 1020c, U. S. C. A. (July, 1934 Cumulative Pamphlet).

It is my opinion that the provisions of these Federal Acts make the bonds issued by these two Federal Corporations bonds of the United States, unconditionally guaranteed as to principal and interest, and that, therefore, the same are acceptable as security under the above mentioned statutes of Florida for the deposit of the moneys involved.

SECTION 3

LIQUIDATORS

NO CORRESPONDENCE

SECTION 4

STOCK ASSESSMENTS

NO CORRESPONDENCE

SECTION 5

POWER TO PLEDGE ASSETS

November 23, 1935.

BANKS AND BANKING—PLEDGE OF ASSETS BY NATIONAL
BANK TO SECURE DEPOSITS BY BOARD OF ADMINISTRATION
—EFFECT OF ACT OF JUNE 25, 1930, CHAPTER 604, 46
STAT. AT L. 809, 12 U. S. C. SECTION 90, ON PLEDGE
PRIOR THERETO

Dear Sir:

Your communication of November 15, 1935, addressed to the Honorable W. V. Knott, as County Treasurer Ex Officio, has been referred to this office for reply, and, together with the records of the Board of Administration, indicates the following facts:

At the commencement of the operation of the Board of Administration in 1930, and on March 12, 1930, a pledge of collateral was made by the First National Bank of Perry to secure deposits of public funds held by Mr. Knott as County Treasurer Ex Officio under Chapter 14486, Acts of 1929. Again on March 15th an additional pledge was made. The first deposit by the Board of Administration was made on March 22, 1930, and on May 2, 1930, the transfer of some \$75,000 was made by the Board of Bond Trustees of Taylor County to Mr. Knott as County Treasurer Ex Officio, which constituted the balance on deposit in the First National Bank of Perry, and which balance was allowed to remain in such bank as the deposit of Mr. Knott. On May 13, 1930, the Board of Administration received from the said bond trustees letter under date of

POWER TO PLEDGE ASSETS

May 10, 1930, enclosing a trust receipt dated May 2, 1930, given by the First National Bank of Perry to the bond trustees, and assigned by them to Mr. Knott as County Treasurer Ex Officio, covering the notes, mortgages, and bonds pledged as security for funds deposited in said bank, such collateral totalling some \$69,000.

On June 25, 1930, the Act of Congress above mentioned became effective, and this Act provides as follows:

"Any (national banking) association may, upon the deposit with it of public money of a State or any political subdivision thereof, give security for the safekeeping and prompt payment of the money so deposited of the same kind as is authorized by the law of the State in which such association is located in the case of other banking institutions in the State."

On June 12, 1930, there was a withdrawal by Mr. Knott of some \$6,000 from the said account.

On September 25, 1930, Mr. Knott received from the said First National Bank a letter under date of September 24, 1930, enclosing New York Exchange covering payment by one J. A. Vicrey on certain of the collateral held.

Again on October 1st, Mr. Knott received from said bank a letter dated September 30, 1930, enclosing Jacksonville Exchange covering payment on collateral by one T. J. Faulkner.

On October 4th there was a deposit made to the said account of certain tax redemption money by the then Comptroller.

On October 18, 1930, the said bank closed its doors, and you have been appointed receiver thereof.

In your letter of November 15, 1935, you make demand upon Mr. Knott as County Treasurer Ex Officio to return the collateral still remaining in his hands, together with the sum of \$23,826.81 in cash collections realized on such collateral. You advise that the Comptroller of the Currency has authorized you to make such demand, and that in case of refusal you are authorized to bring suit therefor.

That a State bank was authorized at the time of this pledge to make a pledge of its assets to secure the deposit of public funds has been well settled:

Gary vs. Kissimmee River Cattle Company, 85 Fla. 268, 95 So. 657;
First American Bank and Trust Company vs. Town of Palm Beach, 96 Fla. 247, 117 So. 900.

See distinction with reference to private funds made in the case of Leyvraz vs. Johnson, 114 Fla. 396, 154 So. 159.

There can be no question concerning pledges made by national banks of a part of their assets to secure public funds after the enactment of

POWER TO PLEDGE ASSETS

the above mentioned Act of 1930. The sole question, therefore, is whether a pledge made prior thereto but allowed to remain in existence after the enactment of said law, and treated by both parties to the transaction as being in existence and recognized by the bank and its officers as being a valid pledge, and but for which pledge of assets the deposit would have been withdrawn, is binding, and to the same effect as if the pledge had been made subsequent to the enactment of said law, without the formality of a re-pledge of such assets.

The basic decisions by the Supreme Court of the United States are *Texas and P. R. Co. vs. Pottorff*, 291 U. S. 245, 78 L. Ed. 777; *Marion vs. Sneed*, 291 U. S. 262, 78 L. Ed. 787.

These cases involved only pledges made after the enactment of the said Act of 1930, but discussed the principles underlying the said Act of Congress.

Whether the purpose of the said statute, which was an amendment to the National Banking Act, was to remove any doubt as to the power of national banks to give security for public deposits and thus enable them to invite such deposits on an equal footing with State banks, (*Fidelity and D. Co. vs. Kokrda* (C. C. A. 10th) 66 Federal (2d) 641;) or whether the amendment indicated that Congress believed the original Act had not granted general power to pledge assets to secure deposits (*Pottorff case*, *supra*), is immaterial to the real question in issue.

The closest approach to a decision on this question was made by the Supreme Court of the United States in the case of *Lewis vs. Fidelity and D. Co. vs. Maryland*, 292 U. S. 559, 78 L. Ed. 1425. This case involved the validity of a pledge made prior to the enactment of said law with the deposits having been made subsequent to its enactment. In that case the United States Supreme Court held that it was not necessary to go through the form of executing a new depository bond, but that such old bond secured deposits made after the enactment of said law, and cited *Jones vs. New York Guaranty and Indemnity Company*, 101 U. S. 622, 627; 25 L. Ed. 1030, 1034.

In the *Lewis case*, *supra*, the Court specifically stated that it had no occasion to consider whether the Act of June 25, 1930, would have validated the lien also in respect to deposits made before that date, but compared to such situation and cited the following cases:

Gross vs. United States Mortgage Company, 108 U. S. 477, 488, 27 L. Ed. 795, 798; 2 S. Ct. 940; *West Side Belt R. Co. vs. Pittsburgh Construction Company*, 219 U. S. 92, 55 L. Ed. 107; 31 S. Ct. 196; *Charlotte Harbor and N. R. Co. vs. Wells*, 260 U. S. 8, 67 L. Ed. 100, 43 S. Ct. 3.

The cases just cited are all cases dealing with validating and curative statutes which were held to have validated by legislative authority the exercise of a power which, while it did not exist at the time of the particular act performed, could have been bestowed at such time. From

POWER TO PLEDGE ASSETS

this statement of dicta in the Lewis case, *supra*, we must unavoidably come to the conclusion that if such question were presented to the Supreme Court of the United States, it did not treat it on such basis, to-wit: as a curative statute validating pledges made prior to its enactment. Such holding would not necessarily mean that the statute is retro-active, but rather that it merely draws upon antecedent facts for its operation. (See cases cited to support this theory in Lewis case, *supra*.)

See also *Kavanaugh vs. Fash*, 74 Fed. (2d) 435 (C. C. A. 10th), decided on the basis of the Lewis case, *supra*.

The only case which we have been able to find after a careful search, which deals identically with the question involved, is that of *Haynes vs. City of Woodward*, 6 Fed. Supp. 270, decided by the District Court of Oklahoma. A certain deposit was made to the City Treasurer prior to the enactment of the said Act of Congress. Twenty-eight thousand dollars of the securities were allowed to continue in his possession after the enactment thereof, and by the acts and conduct of both the City Treasurer and the bank subsequent to the said law, they were treated as a pledge to the city to secure such deposit. Substitutions took place in other collateral, after the enactment of said law, and the Court held that the conduct of the bank at all times subsequent to the enactment of the said law approving the pledge to the City of Woodward, had the same effect as if the entire pledge had been made subsequent to June 25, 1930.

See also general annotations on this subject, 92 A. L. R. 803.

On the basis of the authorities, I therefore am of the opinion that there was both a validation of the prior pledge effected by the enactment of the said law of 1930, and that subsequent to its enactment there was a positive and unequivocal ratification of the pledge made by the acts and conduct of the bank and its officers, between the date of such enactment and the date of the bank's closing. This does not mean that estoppel may create a power, but it does mean that a power once created may be given effect by estoppel.

I therefore am of the opinion that your demand as receiver for the return of this collateral and the money realized thereon, must be declined, and I am so advising Mr. Knott and the Board of Administration.

SECTION 6

MISCELLANEOUS

August 25, 1936.

BANKS—PREFERRED CLAIMS RESULTING FROM DEMAND
PRIOR TO BANK CLOSING*Dear Sir:*

In your letter of the 21st instant you state:

"On or about January 24, 1933, Mrs. _____, a depositor of the Savings Department in the Bank of Starke, requested the withdrawal of her savings account, amounting to \$1,250.00. The Bank of Starke did not comply with her request to pay her the funds, but advised her on the date of January 30, 1933, that they would not pay these funds on demand, but would request a sixty-day notice of withdrawal, as provided for under the rules of the Savings Department as set forth in the pass book."

You also state that the bank acknowledged receipt of the demand and stated that the funds would be available on March 30, 1933. It also appears that the bank was thereafter placed in conservation and has so remained to the present day, having made only 5% distribution to depositors.

You thereupon ask to be advised whether under these facts Mrs. _____ has a preferred claim, in view of the opinion of the Supreme Court of Florida in the case of Tunncliffe vs. Mallett, 137 So. 238.

The facts stated by you as to the claim of Mrs. _____ are almost identical with those on which the opinion of the Court was rested in the case of Tunncliffe vs. Mallett, supra, and on the basis of the holding of the Court in that case, it is my opinion that when Mrs. _____ made demand on the Bank of Starke for withdrawal of her money on deposit, the relation of creditor and debtor thereupon changed, and the Bank thereupon became and from thence forth has continued to be the Trustee of Mrs. _____, holding the money then on deposit in trust, and that her claim against the bank thereupon became and is a preferred claim.

January 27, 1936.

BANKS AND BANKING QUORUM AT MEETING OF SHAREHOLDERS

Dear Sir:

This is in reply to your inquiry of January 10.

Our State banking laws are silent as to what constitutes a quorum at the annual meeting of shareholders for the election of directors of

MISCELLANEOUS

State banks, but our general corporation law provides that a majority of stock shall constitute such a quorum. This provision is incorporated in Section 6011, Compiled General Laws (1927).

In this connection we also call your attention to the case of

GENTRY-FUTCH CO. vs. GENTRY,
106 So. 73.

August 15, 1935.

BANKS AND BANKING—CHANGE OF COMMON STOCK TO PREFERRED STOCK—REDUCTION OF CAPITAL BELOW MINIMUM—
SECTION 6069 C.G.L. 1927; CHAPTER 15873, ACTS OF 1933

Dear Sir:

This is in response to your communication of August 14, wherein you advise that there is a certain bank having \$17,000.00 in outstanding capital stock, \$15,000.00 of which is common stock and \$2,000.00 of which is preferred stock; that the bank wishes to reduce its common stock in the amount of \$6100.00 and sell preferred stock in an equal amount, the reduction and increase to be made simultaneously, leaving the capital stock at \$17,000.00, and thus made up of \$8900.00 common stock and \$8100.00 preferred stock.

You ask whether or not this amounts to a reduction of capital below the minimum of \$15,000.00 permitted, in violation of Section 4138 R. G. S. 1920, Section 6069 C. G. L. 1927.

As previously ruled in my opinion under date of November 15, 1933, page 305, 1933-34 Report, in ascertaining the amount of the capital of a banking company, the same shall be computed on the basis of the unimpaired common stock plus the amount of outstanding unimpaired preferred stock.

It is my opinion that the proposed plan merely changes the set-up in the stock structure and does not violate the said section of the statutes referred to with reference to the reduction of capital below the minimum; the same may, therefore, be legally done.

June 14, 1935.

BANKS, MORRIS PLAN, LIABILITY OF STOCKHOLDERS

Dear Sir:

In your letter of the 13th instant you refer to Senate Bill No. 282, Chapter 16791, Acts of 1935, and ask to be advised whether the stock-

MISCELLANEOUS

holders of Morris Plan Companies qualifying under this Act will be subject to double liability as provided by the banking laws of Florida.

It is my opinion that they will not be. Section 6059 of the Compiled General Laws of Florida provides that the stockholders of every banking company shall be held individually responsible equally and rateably for all contracts, debts, and engagements of such company to the extent of the amount of their stock therein at the par value in addition to the amount invested in such shares.

It is my opinion that this applies only to those banks which are incorporated under our general banking law, and this could not be extended to Morris Plan Companies created under Senate Bill 282, Acts of 1935.

Holders of shares of stock in corporations generally are not personally liable for the contracts and debts of the corporation, and are made so only by statutory provision, and that statutory liability cannot be extended by implication. This, I think, justifies my conclusion that holders of shares of stock in Morris Plan Companies are not subject to double liability for the debts and contracts of the company in the absence of a statute specifically making them so liable.

May 22, 1935.

BANKS AND BANKING, INVESTMENTS

Dear Sir:

Section 4152 of the Revised General Statutes of Florida prohibits State banks and trust companies from directly or indirectly investing any of their funds in stock of "any incorporated company" in this State or elsewhere, except the stock of the Federal Reserve Bank of this District. It also makes it unlawful for such banks and trust companies to directly or indirectly invest any of their funds in bonds or securities other than those therein specifically mentioned, which includes municipal bonds.

In your letter of the 21st instant you state that you have inquiries from several Florida banks inquiring as to whether they can lawfully invest their funds in corporate stock issued by the City of New York. Attached to your letter is a form letter from Robinson-Humphrey Company of Atlanta, to which is attached a prospectus covering the sale of so-called corporate stock of the City of New York, and also an approving opinion by Messrs. Thomson, Wood & Hoffman, Attorneys and Counsellors at Law, of New York City.

You will note from the language of the statutes that the stock which banks and trust companies are specifically prohibited from directly or indirectly investing their funds in, is that of "any incorporated

MISCELLANEOUS

company." I do not think the Legislature had in mind or intended this inhibition to apply to governmental corporations such as municipalities. On the other hand the statute under consideration specifically exempts from the prohibition the investment of funds in municipal bonds.

I note that Messrs. Thomson, Wood & Hoffman treat "the City of New York, New York corporate Stock Issues of March 1, 1935, \$34,000,000 (temporary bonds)" as bonds, and I think their opinion may be taken as authority on this particular point. It is to be noted that the so-called "corporate stock" has a fixed maturity, that it bears interest at a fixed rate payable semi-annually, and for which as appears from the opinion of Messrs. Thomson, Wood & Hoffman, the City of New York has the power and will be obligated to levy ad valorem taxes for the payment of said bonds (corporate stock) and the interest thereon upon all real property within said city, subject to taxation therein without limitation of rate or amount.

This so-called corporate stock, therefore, has all the essential characteristics of municipal bonds, and in my opinion may be so considered by the investor.

October 26, 1936.

BANKS—CHAPTER 15879, ACTS OF 1933—WHETHER BANKS RE-
ORGANIZED UNDER THE PROVISIONS THEREOF ARE
LEGALLY QUALIFIED TO CONTINUE IN BUSINESS

Dear Sir:

This refers to your communication of October 23, 1936, in which you state that the Bank of Starke, Florida, has been operating under the provisions of Chapter 15879, Acts of 1933, since the passage of said Act, and that a plan of reorganization is now contemplated, whereby unsecured depositors will accept stock in the reorganized bank in lieu of their deposits. You further state that it is the expectation that more than seventy-five per cent of the unsecured creditors of the bank will approve the plan of reorganization. It further appears, from your communication, that the Federal Deposit Insurance Corporation is being requested to insure the deposits of said institution, as they are accepted in the future, and that said corporation has requested an opinion as to whether a bank, reorganized under the provisions of said Act, will be legally qualified to continue in business. You ask that I advise you as to this question.

Under our law, state banks are organized pursuant to the provisions of the general law appearing in Section 6052, et seq., of the Compiled General Laws of Florida. Chapter 15879 provides for a method of reorganization of said banks, and further provides that the Comptroller

MISCELLANEOUS

is authorized and empowered to prescribe such rules and regulations as may be deemed necessary in order to carry out the provisions of the Act. It is my view that this chapter should be considered and construed in *pari materia* with the general law governing said state banks, and that as a result of such construction, such banks, so reorganized, are authorized and legally empowered to continue to do business on the reorganized basis. In this connection I may point out that such a bank is not in reality a new bank at all, but the same institution, having only a changed internal structure.

Trusting that this is the information you desire, and returning herewith the matter submitted to us by you, I am

December 11, 1936.

CHAPTER 15879, LAWS OF FLORIDA, ACTS OF 1933—
REORGANIZATION OF BANK

Dear Sir:

I have before me your letter of December 9, 1936, in which you state:

"The Bank of Starke, at Starke, Florida, has been operating under the provisions of Chapter 15879, Acts of 1933, commonly referred to as the Conservatorship Law since the date of the enactment of this Statute, and this institution is now planning to offer a plan of reorganization to the depositors, whereby all unsecured depositors will accept stock in the reorganized bank except the public officials who under the constitution of our state cannot own stock, and it is contemplated that these public officials will be given certificates of deposit on a comparable basis to the ownership of stock to be had by the other depositors and that the certificates of deposit will be payable on or before three years from date and bear interest at 1% per annum."

You request my opinion as to whether, under the circumstances disclosed, any illegal preference will be shown by such action, in favor of those depositors receiving certificates of deposit, instead of stock, in the reorganized bank. I do not find that any questions relative to this act have ever been raised and passed upon by our Supreme Court. For the purpose of this opinion, therefore, it may be assumed that the act is a valid law of the State of Florida. In answer to your inquiry, I have to advise that in my opinion, bearing in mind the provisions of the act in question, no illegal preference is shown by the contemplated treatment of those depositors who will receive certificates of deposit.

MISCELLANEOUS

I assume, of course, that all of the provisions of the act will be strictly complied with in bringing about a consummation of the reorganization.

Under this act broad discretionary powers are conferred upon the Comptroller, as will appear from a consideration of all of its provisions. Moreover, Section 5 thereof clearly contemplates the possibility that under some reorganization plans, some of the depositors may be paid in full for, among other things, that section provides "When such confirmation has been given by a court of competent jurisdiction, all depositors and creditors not a party to said agreement, shall be bound by and made a party to the said plan of reorganization, and shall be treated in all respects as if though (sic) they had joined said agreement, provided, however, that claims of depositors or other creditors *which will be satisfied in full* under the provisions of the plan of reorganization, shall not be included among the total deposits and other liabilities of the bank or trust company, in determining the 75 per cent thereof as above provided."

From this it seems to be clear that since the act contemplates very clearly that under some plans, some creditors will be paid in full and others not, any such preference is not an illegal one. However, I am unable to understand how any preference is involved at all in the contemplated reorganization, for your letter makes it plain that the intent and purpose is to treat all of the depositors on the same basis insofar as, under the law, that can be done. Since the public officials cannot, under the constitution of the state, hold stock, it is certainly reasonable and just to issue to them certificates of deposit, treating them on a comparable basis with the treatment accorded those depositors who can hold certificates of stock. Furthermore, in the long run, it may prove that the holders of certificates of stock will realize a larger per cent of their original deposits than would the holders of such certificates of deposit, particularly since they will participate in dividends which will not be available to holders of mere deposit certificates. In my view of the matter, under such circumstances, it would be wholly arbitrary and unjust, at this time, to say that the holders of the certificates of deposit are being accorded any preferential treatment whatever.

November 21, 1936.

BANKS INVESTMENT TRUST FUNDS

Dear Sir:

In your letter of the 18th instant, you state that Mr. _____, Chairman of the Trust Company Section of the Florida Bankers Association, has asked you two questions with reference to Section 6127 (1)

MISCELLANEOUS

Permanent Supplement of the Compiled General Laws of Florida, 1927, (Chapter 15064, Acts of 1931), the first question being:

"Do you regard this Act as constitutional?"

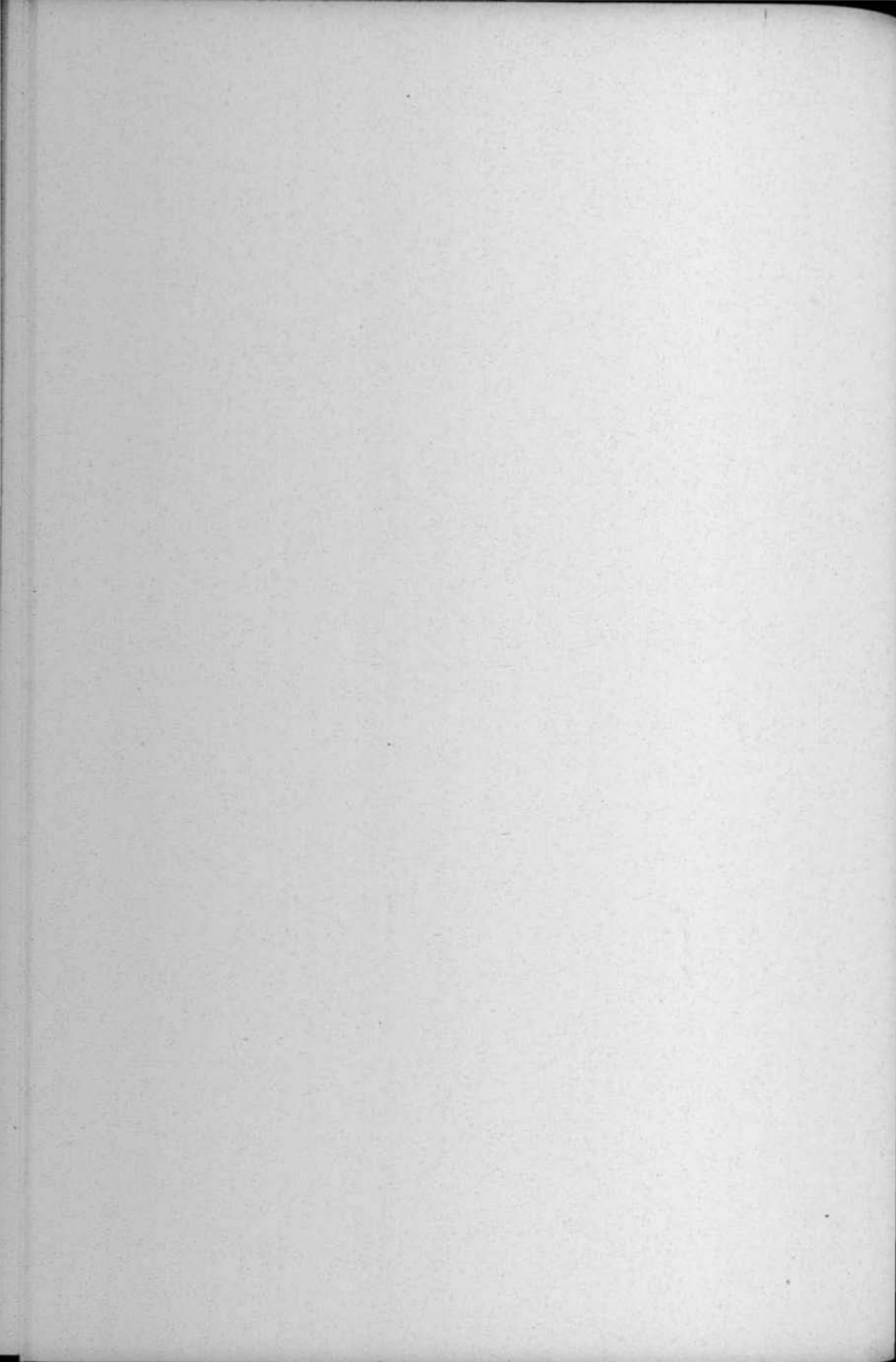
Administrative officers are justified in assuming the constitutionality of legislative enactments, and that has been and is the policy of this Department with rare exception. If there is any doubt on the part of the trust companies as to the constitutionality of this Act, that is a matter on which they should obtain the legal advice of their attorneys.

This applies also to the second question in your letter.

CHAPTER V

INTOXICATING LIQUORS

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INTOXICATING LIQUORS

SECTION 1

IN GENERAL

February 21, 1935.

INTOXICATING LIQUORS—POSSESSION—DRUNKENNESS

Dear Sir:

I am in receipt of your letter of the 13th instant, making inquiry as to statutes in effect with reference to possession of intoxicating liquors and also with reference to drunkenness.

In reply your attention is called to Article XIX of the State Constitution, as amended at the General Election of 1934, which contains the following language in Section 2 thereof:

"All laws relating to intoxicating liquors, wines and beer which were in effect on December 31, 1918, unless changed by the Legislature by laws expressly made, effective concurrently with this amendment, shall as so changed become effective with this Article and shall so remain until thereafter changed by the Legislature."

With regard to the possession of intoxicating liquors, I beg to say that I do not know of any statute effective on December 31, 1918, prohibiting the possession of liquor by an individual for his own person use without any intention of sale or other violation of the law relating to intoxicating liquors. Section 12 of Chapter 7283, Acts of 1917, prohibits the receipt of intoxicating liquors for storage, distribution or on consignment for another. With reference to drunkenness, I refer you to Section 7616, Compiled General Laws of Florida, 1927, reading as follows: "It shall be unlawful for any person to become or be drunk or intoxicated."

With reference to drunkenness, I also refer you to Section 3549 of the General Statutes of 1906, which was effective on December 31, 1918, and which reads as follows:

"Whoever is guilty of drunkenness by the voluntary use of intoxicating liquors shall for the first offence be punished by fine not exceeding five dollars, and for any like offence committed after the first conviction by fine not exceeding ten dollars, or by imprisonment not exceeding three months; but no prosecution shall be commenced after six months from the commission of the offense."

IN GENERAL

This office has recently held that Article XIX of the State Constitution relating to intoxicating liquors, as amended at the General Election of November 6, 1934, has particular reference to the manufacture and sale of intoxicating liquors and does not relate to or affect Section 7749, pertaining to the operation of motor vehicles while intoxicated or under the influence of intoxicating liquors. Under the same reasoning, it is my opinion that said amendment to Article XIX of the Constitution does not relate to or affect Section 7616 of the Compiled General Laws of Florida, 1927, above quoted, making it unlawful for any person to become or be drunk or intoxicated.

Section 7616 was formerly Section 5472 of the Revised General Statutes of 1920, and originally Section 8 of Chapter 7736, Acts of 1918. Our Supreme Court in the case of Albritton vs. State, 82 Fla. 20, 89 So. 360, held that this Section as Section 8 of Chapter 7736 was invalid for the reason that the title of the Act was not broad enough to include the provisions of said Section.

This Section, however, was embodied in the Revised General Statutes of 1920, and made valid by such compilation since the validity of the statutes included in such compilation was not dependent upon the validity of the Sections as originally enacted. It appears that the only time this Section has been considered by our Supreme Court since being included in the Revised General Statutes of 1920 was in the case of Frazier vs. State, 87 Fla. 235, 100 So. 155, where the Court held that the plaintiff in said case was improperly held in custody; that his offence was committed prior to the effective date of the Revised General Statutes. I find no subsequent decision of our Supreme Court on said Section as it appeared in the Revised General Statutes of 1920 since the effective date of such compilation, nor as it appears in the Compiled General Laws of Florida, 1927, under Section 7616, but it is my opinion that the Courts would probably uphold the validity of such Section and would also probably hold that the offence is not controlled by laws pertaining generally to intoxicating liquors in effect on December 31, 1918. If, however, the Courts should hold that Section 7616 is not now applicable to the offence of becoming or being drunk or intoxicated, recourse may be had to Section 3549 of the General Statutes of 1906, above quoted.

February 7, 1935.

INTOXICATING LIQUORS—REQUEST FOR COPIES RECENT SUPREME COURT DECISIONS—INQUIRY RELATIVE TO
DAVIS PACKAGE LAW.

Dear Sir:

I am in receipt of your letter of the 2nd instant with references to intoxicating liquors in which you request copies of recent opinions by the

IN GENERAL

Supreme Court, and in compliance with your request I am enclosing copies of the following opinions:

1. State of Florida ex rel. Charlie Deeb vs. C. M. Ausley, etc., as Members Board of County Commissioners Leon County, decided October 6, 1934, holding that mandamus did not lie to compel the County Commissioners to call a wet and dry election in Leon County on Nov. 6, 1934.
2. D. C. Coleman, Sheriff, vs. State ex rel. R. J. Race, decided Jan. 19, 1935, holding that Section 3448, Gen. Stats. of 1906, as amended by Chap. 6861, Acts of 1915, providing penalty for selling liquor without a license is revived and effective under Article XIX of the State Constitution, as amended at the General Election on Nov. 6, 1934.
3. State ex rel. Lillian H. Hoffman vs. Leigh R. Powell, Jr., and Henry W. Anderson, Receivers S. A. L. Ry., decided on Jan. 26, 1935, holding Chapter 7733, Acts of Extra. Session of 1918, effective on Dec. 31, 1918, revived and effective at this time under the provisions of Article XIX of the State Constitution, as amended at the General Election of Nov. 6, 1934.

You make some reference to what you term the Davis Package Act. Chapters 7284, Acts of 1917, and 7733, Acts of 1918, relate to shipments of intoxicating liquors. Both of these Acts relate to shipments of intoxicating liquor into dry territory and each of said Acts contains a section permitting one quart of intoxicating liquor to the person during a period of 30 days. The first Act, Chapter 7284 of 1917, was held invalid in the case of *Ex parte Francis*, 76 Fla. 304, 79 So. 753. The last mentioned Act, Chapter 7733 of 1918, appears to be still in force and effect, Section 4 of which provides that any person may order, purchase or transport intoxicating liquors for personal use as a beverage not exceeding one quart during any period of 30 consecutive days.

I am sure you are already familiar with 27 U. S. C. A. relating to intoxicating liquors and particularly to Section 44 and also Sections 4 (paragraph 5), 21, 39 and 40.

I have requested Mr., connected with the Federal work here in Tallahassee, to send you a copy of a compilation made up by that Department of intoxicating liquor laws in effect on December 31, 1918, and he advises the same will be forwarded to you today. The supply is very limited but he stated he would be glad to send you a copy.

March 22, 1935.

INTOXICATING LIQUORS, DRUNKENNESS, JURISDICTION

Dear Sir:

I am in receipt of your letter of the 21st instant, the body of which reads as follows:

"I would appreciate your giving us an opinion as to whether or not we are allowed by statute to try a case of drunkenness in a Justice of the Peace Court."

I reply I refer you to my letter addressed to you, under date of February 21, 1935, copy of which I am enclosing herewith, together with copy of letter by this office to Hon. _____, Justice of the Peace, Caryville, Florida, under date of March 6, 1935.

I again refer you to Section 7616, Compiled General Laws of Florida, 1927, making it unlawful for any person to become or be drunk or intoxicated, and also to Section 7631 of the same compilation, which provides that in counties where there is not a Court of Record, Criminal Court of Record or County Court. The County Judge's Court shall have exclusive jurisdiction of all criminal prosecutions for first offense under this Article. The Article referred to is the same Article containing Section 7616 with reference to drunkenness. It is my opinion that these Sections apply to cases of drunkenness. If our Supreme Court should hold otherwise, recourse could then be had to Section 3549 of the General Statutes of 1906 in which Justices of the Peace, as well as County Judges, would have jurisdiction.

November 13, 1936.

INTOXICATING LIQUORS—STATUTES IN FORCE

Dear Sir:

I am in receipt of your letter of the 10th instant making inquiry if Sections 7594 to 7600, inclusive, Sections 7601 to 7613, inclusive, and Sections 7615 to 7648, inclusive, Compiled General Laws of Florida, 1927, are still in force and effect.

Chapter 16,774, Laws of Florida, Acts of 1935, specifically repeals Sections 7594 to 7600, inclusive, and Chapter 15,866, Laws of Florida, Acts of 1933, specifically repeals Section 7613 of said compilation.

I find no specific repeal of the remaining Sections mentioned which would appear to be still in force and effect unless contrary to the provisions of some subsequent laws and particularly Chapter 16,774, Acts of 1935.

SECTION 2

BEVERAGE ACT (Chapter 16774 of 1935)

August 19, 1936.

**INTOXICATING LIQUORS—SPECIAL ELECTIONS—TIME OF
HOLDING***Dear Sir:*

This is in reply to your letter of August 18th in which you request my opinion as to the proper construction of the following provision contained in House Joint Resolution No. 83, proposing the amendment of Article XIX of the Constitution of Florida, which said amendment was adopted by the people in November, 1934:

"Elections under this Section shall be held within sixty days from the time of presenting said application, but if any such election should thereby take place within sixty days of any State or National election, or primary, it shall be held within sixty days after such State or National election, or primary."

It is my opinion that the provision above set forth is intended to prevent such special elections provided in amended Article XIX from being held within sixty days before any State or national election or primary. If the application for such an election is presented to the Board of County Commissioners at such a time as would otherwise authorize the calling of such election within sixty days before a State or national election or primary, then by reason of the provision above set forth, such special election should be called for a date within sixty days after the State or national election or primary.

June 9, 1936.

**INTOXICATING LIQUORS—STAMP TAXES—LIMIT OF GALLONS
POSSESSED OR TRANSPORTED***Dear Sir:*

I am in receipt of your letter of the 6th instant making inquiry if tax stamps are required on all bottles containing beverages in excess of three gallons in possession of, or being transported by an individual.

I refer you to paragraph (1) of Section 11 of Chapter 16,774, Laws of Florida, Acts of 1935, reading as follows:

"From and after thirty days after this Act becomes effective it shall be unlawful for any person to possess or transport within this State beverages, as to the sale of which a stamp tax is imposed, in excess of three gallons, unless the bottles or other immediate containers in which such beverages are contained

BEVERAGE ACT (Chapter 16774 of 1935)

shall have affixed to them the stamps hereby required. Provided that this provision shall not apply to common carriers or to manufacturers or to distributors licensed hereunder. Provided, further, that this provisions shall not apply to persons possessing or transporting such beverages for their personal consumption and not for re-sale in the event such beverages shall not have been sold after the stamp tax hereunder shall have become effective; but the burden shall be upon the possessor or transporter to establish that such beverages are for his personal consumption and are not for re-sale and that the beverages were not sold after the stamp tax hereunder became effective."

The above language indicates that tax stamps should be attached to all bottles of beverages in excess of three gallons in the possession of or being transported by any person, but it is doubtful if this statute may be construed to require tax stamps on the first three gallons of any quantity of beverages so possessed for their personal consumption and not for re-sale.

April 10, 1936.

**INTOXICATING LIQUORS—REFUND FOR DESTROYING REVENUE
STAMPS—APPROPRIATION**

Dear Sir:

I am in receipt of your letter of the 3rd instant making inquiry as to whether refunds for destroyed liquor revenue stamps must be made from the 8% of collections of taxes collected for salaries and expenses.

Section 1 of Chapter 16,774, Laws of Florida, Acts of 1935, provides among other things as follows:

"* * * The salary and expenses of the Director, of the Supervisors, and of the other employees of the Beverage Department and such other expenses as are incurred in the enforcement of this Act, are hereby appropriated out of the taxes collected hereunder, and no other appropriation whatsoever shall be made therefor, but the appropriation hereby made shall in no event exceed in any year 8% of the taxes collected hereunder during said year."

Section 10 of said Act reads as follows:

"The Comptroller may upon receipt of satisfactory evidence of the facts, and of approval by the Director, make allowance for or redeem such stamps as may have been spoiled, destroyed or rendered useless or unfit for the purpose intended or for

BEVERAGE ACT (Chapter 16774 of 1935)

which the purchaser may have no use, or which through mistake may have been improperly or unnecessarily used. Such allowance or redemption may be made either by giving to the purchaser other stamps in lieu of the stamps so allowed for or redeemed or by refunding the amount or value to the owner thereof, but no allowance or redemption shall be made in any case until the stamps so spoiled shall have been returned to the Comptroller or until satisfactory proof has been made showing the reason why the same cannot be returned or if so required by the Comptroller or by the Director when the person presenting the same cannot satisfactorily trace the history of said stamps from their issuance to the presentation of his claim as aforesaid. No claim for redemption of or allowance for stamps shall be allowed unless presented within four years after the purchase of said stamps. No allowance or repayment shall be made except to the original purchaser. Such claim shall not be paid unless approved by both the Director and the Comptroller. Sufficient funds are hereby appropriated out of the revenues collected under this Act to make such repayment."

From the above you will note that the 8% of taxes collected are appropriated specifically for salaries and expenses of the Department. You will also note that Section 10 is a specific appropriation of funds for redemption of liquor revenue stamps destroyed or rendered useless or unfit for the purposes intended.

In view of the specific and separate appropriation for refunds in connection with such destroyed stamps it would appear that it was not the intention of the Legislature to consider such refunds as one of the expenses of the Department for which the appropriation of 8% of collections was made in Section 1, above quoted. It is, therefore, my opinion that such refunds should not be charged to the 8% of collection of taxes for expenses of the Department, but should be paid from other collections.

January 25, 1936.

INTOXICATING LIQUORS—LICENSE TO OPERATOR OF
HOUSE BOAT

Dear Sir:

I have your letter of the 22nd inst., the body of which reads as follows:

"May a liquor license be issued to a qualified person for the sale of liquor, wine and beer on a House Boat, which boat has no motive power, but must be towed from place to place, provided said boat is not anchored upon the waters of any lake within this State?"

BEVERAGE ACT (Chapter 16774 of 1935)

In reply I beg to say that I find no provision in the law that prohibits the issuance of a regular vendor's license to such a person, but the license to operators of steamships, buses and airplanes, provided for in paragraph IX of Section 5 of Chapter 16,774, Laws of Florida, Acts of 1935, may not be issued to such a person.

November 21, 1935.

INTOXICATING LIQUORS—OPERATION OF SLOT MACHINES
BY VENDORS OF BEVERAGES

Dear Sir:

I have your letter of the 16th inst., the body of which reads as follows:

"Under the provisions of Chapter 16,774, Acts of 1935, is the operation of slot machines and other licensed machines legal in Package stores and/or in consumers, on premises, places."

In reply your attention is called to paragraph (e) of Section 11, Chapter 16,774, Acts of 1935, reading as follows:

"From and after October 1st, 1935, vendors licensed under sub-section III of Section 5, shall not in said places of business sell or expose for sale any merchandise other than such beverages, and such places of business shall be devoted exclusively to such sales. Such places of business shall have no openings permitting direct access to any other building or room."

Sub-section III of Section 5 of said Act, referred to above, relates to vendors operating places of business where beverages are sold only in sealed containers for consumption off the premises. You will note in the above quotation it is provided that such places of business shall be devoted exclusively to such sales. In view of this provision it is my opinion that it is not lawful for such vendors to have in their places of business slot machines and other coin operated devices provided for under Chapter 17,257, Laws of Florida, Acts of 1935.

Your attention is further called to paragraph (f) of Section 11, Chapter 16,774, Acts of 1935, part of which reads as follows:

"Vendors licensed under Section 5, sub-sections IV, V, VI, VII, or VII½, shall provide seats for the use of their customers. Such vendors may sell the beverages herein defined by the drink or in containers for consumption on or off the premises where sold, but when such beverages are sold by the drink or for consumption on the premises where sold, they shall be sold only to customers who shall consume such beverage while seated. It

BEVERAGE ACT (Chapter 16774 of 1935)

shall be unlawful for such premises to contain swinging doors or to contain screens so placed as to prevent passers-by from seeing into the premises. There shall not be sold at such places of business anything other than the beverages hereby permitted and what is customarily sold in a restaurant. * * * "

Sub-sections IV to VII $\frac{1}{2}$ of Section 5, referred to in the above quotation, relate to vendors operating places of business where consumption on the premises is permitted. In my opinion neither the above quoted statute nor any other portion of Chapter 16,774 appears to prohibit such vendors from having in their places of business slot machines or other coin operated devices provided under Chapter 17,257, Acts of 1935.

November 20, 1935.

**INTOXICATING LIQUORS—CRIMINAL WARRANT FOR
ILLEGAL SALES**

Dear Sir:

I have your letter of the 14th instant making inquiry if criminal warrants should be secured against the proprietor or against his clerk in his place of business who sells beverages unlawfully.

In reply I beg to say a warrant may be secured against the clerk in such instances and may also be secured against the proprietor of the institution if such sale is made under the direction of such proprietor.

November 9, 1935.

INTOXICATING LIQUORS—AD VALOREM TAXES

Dear Sir:

I have your letter of the 6th instant making two inquiries as follows:

1. "May incorporated cities or towns legally assess and collect a personal property ad valorem tax on a stock of beverages as defined by Chapter 16,774, Acts of 1935?"
2. "May the State and counties legally levy and collect such a tax?"

In reply I beg to say I do not find that such tax is prohibited by Chapter 16,774, the Beverage Act of 1935. The last paragraph of Section 7 of said Act contains a prohibition against municipalities levying a license or similar tax on the manufacture, distribution, transportation, importation or sale of such beverages, but is not a prohibition

BEVERAGE ACT (Chapter 16774 of 1935)

against an ad valorem tax. The last paragraph of sub-section (c) of Section 9 of said Act provides that there shall be only one State tax paid as to each gallon or fraction thereof of beverages sold under this Act and no other excise tax shall be levied directly or indirectly. This provision relates to taxes on the sale of beverages and is not a prohibition against a State ad valorem tax.

Your attention is now called to Section 1 of Article IX of the State Constitution, which provides for a uniform and equal rate of taxation. Your attention is further called to Section 5 of Article IX of the State Constitution which provides that the Legislature shall authorize the several counties and incorporated cities or towns in the State to assess and impose taxes for county and municipal purposes and all property shall be taxed upon the principals established for State taxation. Your attention is further called to Section 913, Compiled General Laws of Florida, 1927, as amended by Chapter 16,266, Acts of 1933, which requires the Tax Assessor to ascertain by diligent inquiry the names of all taxable persons in his county and also all of their taxable personal property on the 1st day of January of each year and make out an assessment roll of such taxable property.

In view of the above it is my opinion that municipalities as well as the State and county may legally assess and collect a personal property ad valorem tax on stocks of beverages as defined by Chapter 16,774, Acts of 1935.

November 4, 1935.

INTOXICATING LIQUORS—APPROVAL OF LICENSE BY DIRECTOR

Dear Sir:

I have your letter of the 1st instant, the main paragraph of which reads as follows:

"Will this Department be sustained in disapproving an application for a license to sell liquor in an incorporated city were both the City Commissioners and the County Commissioners have approved same?"

Answer to your inquiry will depend upon whether your disapproval is based on lawful or reasonable grounds. I do not think an arbitrary disapproval without lawful and reasonable grounds for same would be authorized.

With reference to municipalities your attention is called to Section 5, the last paragraph of which provides that no license shall be granted to a vendor whose place of business is within 2500 feet of an established school or church except in incorporated cities or towns and such cities and towns are given the power to establish zoning ordinances restricting locations for the sale of liquors.

BEVERAGE ACT (Chapter 16774 of 1935)

Your attention is called to paragraph (k) of Section 12 prohibiting the sale of intoxicating liquors between 12 P. M. Saturday and 12 P. M. Sunday, except in incorporated cities and towns which are authorized by ordinance or resolution to regulate or prevent such sales.

Your attention is also called to the last paragraph of Section 15 which provides that nothing in the Act shall be construed to affect or impair the right of any incorporated city or town to enact ordinances regulating the hours of business and locations of places of business and prescribing sanitary regulations of any licensee under the Act.

Your attention is further called to Section 2 of said Act which provides for County Commissioners to approve or disapprove application for license and forward their findings to the Director of the Beverage Department, who shall approve or disapprove the findings of the County Commissioners and approve or disapprove the application. In case of disagreement between the Director and County Commissioners provision is made for the matter to be referred to the Governor who shall finally order the application to be granted or denied as justice shall require.

You will note various provisions in the statute relating to the qualifications of applicants for license. Such applicants must possess the qualifications required by statute.

October 9, 1935.

**INTOXICATING LIQUORS—MANUFACTURE OF MALT BEVERAGES
OF NOT MORE THAN 3.2% IN DRY COUNTIES**

Dear Sir:

I have your letter of the 7th instant, making the following inquiry:

"Under Chapter 16,774, Laws of Florida, Acts of 1935, may a license be legally issued permitting the manufacture of malt beverages containing not more than 3.2% of alcohol by weight in dry counties?"

Your attention is called to the title of Chapter 16,774, Laws of Florida, Acts of 1935, reading as follows:

"AN ACT Regulating and Taxing the Manufacture, Distribution and Sale of Beverages Containing More Than One Per Centum of Alcohol, Creating and Providing for a State Beverage Department, Providing Penalties for the Violation of this Act and Repealing Existing Laws Concerning Said Beverages."

The language of the above quoted title shows it is not only the purpose of the Act to regulate the manufacture of intoxicating liquors but to regulate the manufacture of beverages containing more than 1% of alcohol.

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 BEVERAGE ACT (Chapter 16774 of 1935)

Your attention is called to the following paragraph contained in Section 5 of said Act:

"No license except under sub-sections (a) and (b) of Section 5 hereof shall be issued to a manufacturer or distributor for the operation of a manufacturing or distributing plant or establishment in any county where the sale of intoxicating liquors, wines and beers is prohibited."

Your attention is again called to sub-sections (a) and (b) of Section 5, reading as follows:

"(a) If engaged in the manufacture of wines and of nothing else a State license tax of \$50.00

"(b) If engaged in the manufacture of wines and cordials and of nothing else a State license tax of \$100.00."

In view of the above quoted statutes limiting the manufacture of beverages in dry counties to wines or wines and cordial, it is my opinion that licenses may not be legally issued permitting the manufacture of malt beverages containing not more than 3.2% of alcohol in dry counties.

October 7, 1935.

INTOXICATING LIQUORS—AUTHORITY OF INCORPORATED
CITIES

Dear Sir:

I have your letter of the 4th instant, referring to Chapter 16,774, Laws of Florida, Acts of 1935, commonly known as "the liquor control law", and containing two inquiries. Your first inquiry reads as follows:

1. Does an incorporated city or town have the authority to delegate unto itself by ordinance, the power or right to refuse a city license to any one who has legally and properly obtained a State and County license?"

As to the authority of municipalities to make regulations relating to the sale of intoxicating liquors, I refer you to paragraph (k) of Section 11, which authorizes incorporated cities and towns by ordinance or resolution to regulate or prevent the sale of intoxicating liquors between the hours of 12:00 P. M. Saturday and 12:00 P. M. Sunday. I also refer you to the last paragraph of Section 15 which provides that nothing in the Act shall be construed to affect or impair the power or right of any incorporated town or City to enact ordinances regulating the hours of business and locations of places of business, and prescribing sanitary regulations therefor of any licensee under the Act within the corporate limits of such town or City. Your attention is further called to the last paragraph of Section 5 of said Act reading as follows:

BEVERAGE ACT (Chapter 16774 of 1935)

"No license under sub-sections III, IV, V, VI, VII, VIII $\frac{1}{2}$ of this Section shall be granted to a vendor whose place of business is or shall be within 2,500 feet of an established school or church except in incorporated cities and towns, which said incorporated cities and towns are hereby given the power hereafter to establish zoning ordinances restricting the location wherein such licensee may be permitted to conduct such place of business and no license shall be granted to any such licensee to conduct a place of business in a location where such place of business is prohibited from being operated by such municipal ordinance."

The above quoted statute appears to give municipalities rather broad powers, but in my opinion the same may not be exercised in an unreasonable manner and certainly not to the extent of complete prohibition in territory where the sale is not prohibited by law.

Your second inquiry reads as follows:

"2. Do they have the authority by ordinance to prevent any one, properly and legally holding a State and County license granting them the right to sell intoxicating liquors for on premises consumption, from also selling in sealed containers for consumption off premises?"

In reply to your second question I beg to say said inquiry should be answered in the negative. In this connection, your attention is called to paragraph (f) of Section 11, which specifically provides as follows:

"Vendors licensed under Section 5, sub-sections IV, V, VI, VII, or VII $\frac{1}{2}$, shall provide seats for the use of their customers. Such vendors may sell the beverages herein defined by the drink or in containers for consumption on or off the premises where sold, but when such beverages are sold by the drink or for consumption on the premises where sold, they shall be sold only to customers who shall consume such beverage while seated. * * * "

September 10, 1935.

INTOXICATING LIQUORS—PROSECUTIONS—COURTS

Dear Sir:

I beg to acknowledge receipt of your favor of the 6th inst., in which you request my opinion as to whether or not prosecutions of persons engaged in the unlawful selling of alcoholic and intoxicating liquors, in violation of any of the provisions of House Bill 496, Chapter 16774 of 1935, should be brought in the Circuit Court.

BEVERAGE ACT (Chapter 16774 of 1935)

Section 15 of the Act referred to makes the violation of certain provisions of the Act felonies and the violation of all other provisions thereof misdemeanors punishable by a fine of not more than \$1,000.00 or imprisonment for not more than six months in the county jail. The Circuit Court, in counties where there are no county courts, criminal courts of record or courts of crimes, would have jurisdiction of all prosecutions for violations of the Act.

September 3, 1935.

**INTOXICATING LIQUORS—SALE—DISTANCE FROM
CHURCH OR SCHOOL**

Dear Sir:

I have your letter of the 30th ultimo making inquiry as to how far from a church in a country district a vendor of intoxicating liquors is required to have his place of business.

In reply I beg to say that the last paragraph of Section 5 of House Bill No. 496 (Chapter 16,774), Acts of 1935, is the only statute that I find on the subject of your inquiry. I quote said paragraph as follows:

"No license under sub-sections III, IV, V, VI, VII, VII $\frac{1}{2}$ of this Section shall be granted to a vendor whose place of business is or shall be within 2,500 feet of an established school or church except in incorporated cities and towns, which said incorporated cities and towns are hereby given the power hereafter to establish zoning ordinances restricting the location wherein such licenses may be permitted to conduct such place of business and no license shall be granted to any such licensee to conduct a place of business in a location where such place of business is prohibited from being operated by such municipal ordinance."

September 3, 1935.

**INTOXICATING LIQUORS—SALE IN DRY PRECINCTS OF
WET COUNTIES**

Dear Sir:

I have your letter of the 24th ultimo, making inquiry if House Bill No. 496, Acts of 1935 (Chapter 16,774), prohibits or penalizes the sale of intoxicating liquor in dry precincts of wet counties or prohibits Tax Collectors of such counties from issuing licenses for sale in such dry precincts.

BEVERAGE ACT (Chapter 16774 of 1935)

In reply I beg to say that I find no statute prohibiting or penalizing such sales or prohibiting Tax Collectors in such counties from issuing licenses for sale in dry precincts of such wet counties.

August 15, 1935.

**INTOXICATING LIQUORS—MANUFACTURER OR DISTRIBUTOR
HAVING INTEREST IN BUSINESS OF VENDOR**

Dear Sir:

I am in receipt of your letter of the 14th instant, quoting from sub-section (c) of Section 4 of House Bill No. 496 (Chapter 16,774), Acts of 1935, as follows:

"No licensed manufacturer or distributor of any of the beverages herein referred to shall have any financial interest directly or indirectly in the establishment or business of any vendor licensed under this Act."

You make inquiry if the ownership of stock in two corporations by an individual constitutes "financial interest directly or indirectly".

In reply I beg to say that the words "financial interest directly or indirectly" relate to the licensed manufacturer or distributor, and if such manufacturer or distributor is a corporation the said words refer to the manufacturer or distributor as a corporation and not to some stockholder or individual member of such corporation.

The above quoted statute would therefore have no application to a corporation having as one of its stockholders an individual who may also be a stockholder of some other corporation.

April 5, 1935.

**INTOXICATING LIQUORS—REFUND CANNOT BE MADE TO PUR-
CHASER OF LICENSE TO SELL MALT AND VINOUS BEVERAGES
WHERE OWNER LATER PURCHASES LIQUOR LICENSE**

Dear Sir:

I have your letter in which you state "that the HAVANA CAFE, located in Hillsborough County, was issued a license to sell malt and vinous beverages, as provided by Chapter 15884, Laws of Florida, 1933, and that later the Havana Cafe purchased a liquor license from J. M. Burnett, County Tax Collector, which gives him the right to sell wines and beers, as well as liquor".

You request my opinion upon the question "as to whether or not the County and State would be authorized to refund to the Havana Cafe the amount of the license tax paid for malt and vinous beverages".

BEVERAGE ACT (Chapter 16774 of 1935)

There is no provision in the statutes of Florida which authorizes or permits the refund of a license tax under the circumstances above set forth.

It is my opinion that neither the State officials nor the County officials have any authority to refund to the Havana Cafe the money paid for the license for the sale of malt or vinous beverages.

March 8, 1935.

INTOXICATING LIQUORS—PETITION FOR PERMIT TO SELL,
DRUG STORES

Dear Sir:

I am in receipt of your letter of the 7th instant, enclosing copy of a letter from _____ Drug Company of Avon Park, Florida, making inquiry if drug stores may dispense U.S.P. whiskey and U.S.P. brandy on a physician's prescription.

It is my understanding that U.S.P. whiskey means whiskey containing 50% of alcohol by volume or 45% by weight. It is my opinion under the statutes effective December 31, 1918, drug stores are not permitted under their privilege of selling alcohol on prescriptions to sell whiskey, gin, wines or other intoxicating liquors without securing a permit and license as other dealers in intoxicating liquors.

February 1, 1935.

INTOXICATING LIQUORS, INTERSTATE COMMERCE

Dear Sir:

I am in receipt of your letter of the 30th ultimo, relative to intoxicating liquors, the second paragraph of which reads as follows:

"Please give me your opinion as to whether or not a salesman who takes orders for liquor and transmits these orders to a liquor dealer of a foreign nation; this liquor dealer of a foreign nation shipping their liquor in the name of the salesman to a custom warehouse, which is in turn delivered from the custom warehouse to licensed liquor dealers in the State of Florida will be required to take out a liquor dealer's license."

In reply I beg to say in my opinion no license would be required in such cases on account of the rulings of our Supreme Court, as well as the Federal Courts, with reference to interstate and foreign commerce.

BEVERAGE ACT (Chapter 16774 of 1935)

Feb. 1, 1935.

INTOXICATING LIQUORS, INTERSTATE COMMERCE

Dear Sir:

I am in receipt of your letter of the 29th ultimo, relative to intoxicating liquors reading as follows:

"Please give me your opinion as to whether or not a distiller of liquors located outside the State of Florida, who does not maintain a warehouse, or other place of business in the State of Florida, may ship his liquors direct to a licensed wholesale, or retail liquor dealer in the State of Florida without being required to pay a liquor dealer's license; also if a distiller located outside the State of Florida who sends his salesmen into the State of Florida, takes orders from licensed wholesale, or retail liquor dealers of the State of Florida; sends his orders to the distiller located outside the State of Florida where such orders are filled, and ship to the licensed liquor dealers in the State of Florida, would such salesmen be required to pay a liquor dealer's license?"

Answering the first question contained in the above inquiry, I beg to say in my opinion such shipments may be made into wet counties of the State of Florida without any license being required therefor. Shipment into dry counties is prohibited.

Answering the second question contained in the above inquiry, you are referred to Section 2, Chapter 6179, Acts of 1911, as amended by Chapter 6861, Acts of 1915, which provides in part as follows:

"Any person or persons, firm or association that shall sell *or cause to be sold*, or keep for sale, any intoxicating liquors, wines or beer without first paying the license required by law, shall, upon conviction, be fined any sum not more than Five Hundred Dollars * * * *"

Under date of December 27, 1934, a telegram prepared by one of the Assistants in the office was sent to Hon. Emmett Dougherty, Secretary Distillers Institute, Washington, D. C., holding that under the above mentioned statute out of State distillers having no warehouse or other place of business in Florida must nevertheless secure license for sale of intoxicating liquors before soliciting orders for sale and delivery of same in this State.

The underscored words *or cause to be sold* in the above quoted statute appear to be the basis for the above opinion to Mr. Dougherty. However, an examination of the decisions of our Supreme Court, as well as the Federal Courts, with reference to interstate commerce indicates that even though the above statute may be authority for requiring licenses in such instances, the Courts would probably not uphold such a license charge.

BEVERAGE ACT (Chapter 16774 of 1935)

In view of the above, it is my opinion that a license cannot be required under situations mentioned in the second question of your above quoted inquiry.

June 8, 1935.

INTOXICATING LIQUORS, MUNICIPAL CONTROL.

Dear Sir:

I have your letter of the 5th instant, enclosing telegram from _____ of Palatka, Florida, reading as follows:

"UNDER LIQUOR CONTROL ACT EFFECTIVE MAY TWENTY SEVENTH CAN AN INDIVIDUAL OPERATING RESTAURANT BE FORCED TO CLOSE RESTAURANT BUSINESS ON SUNDAY WHERE LIQUOR SOLD IN WEEK DAYS PROVIDED NO LIQUORS SOLD SUNDAY STOP HAS MUNICIPALITY RIGHT OR COUNTY OR STATE."

Answering your inquiry I refer you to the last paragraph of Section 15 of House Bill No. 496 of the 1935 Legislature, reading as follows:

"Nothing in this Act contained shall be construed to affect or impair the power or right of any incorporated town or city of the State hereafter to enact ordinances regulating the hours of business and locations of places of business, and prescribing sanitary regulations therefor, of any licensee hereunder within the corporate limits of such city or town."

The above quoted provision is all that I have found in the statute relating to the inquiry and would appear to refer to the regulation of the hours of business of the licensee with reference only to the sale of liquors.

Attached find telegram returned.

February 19, 1935.

INTOXICATING LIQUORS—SEARCH WARRANTS

Dear Sir:

I am in receipt of your letter of the 13th instant, enclosing a communication from Hon. _____, Sheriff of Okaloosa County, under date of the 8th instant, making inquiry as to the manner of securing search warrants in connection with intoxicating liquor violations in wet counties.

In reply your attention is called to Section 3561, General Statutes of 1906, reading as follows:

BEVERAGE ACT (Chapter 16774 of 1935)

"It shall be the duty of all sheriffs, deputy sheriffs' constables and police officers in their respective jurisdictions, and they are hereby authorized and empowered to enter any building, booth, tent or other place, or part thereof, with or without warrant, in which they have good cause to suspect that spirituous, vinous or malt liquors are kept for sale, contrary to law, and to seize the same and arrest the parties so engaged in such sales, and if such liquors in such quantities as to confirm the belief of illegal sales of the same be found in the building, booth, tent or other place, the same shall be prima facie evidence of the selling of liquor contrary to law: Provided, however, That this law shall not be so construed as to apply to persons keeping a reasonable amount of spirituous liquors in his private residence for private use."

While the above statute authorizes the Sheriff to make search with or without warrant, I would advise that warrant be first obtained. In this connection, your attention is called to the case of Putnal vs. State, 56 Fla. 86, 47 So. 864, the 13th headnote of which reads as follows:

"Section 3561 of the General Statutes of 1906, relating to searches without warrant, applies generally, and is not confined to 'the selling of liquors in counties or precincts voting against such sales,' as it was when originally enacted and prior to its being incorporated in and adopted as a part of such General Statutes."

Attached hereto you will find the letter of Sheriff ————returned.

January 12, 1935.

**INTOXICATING LIQUORS, OPERATING MOTOR VEHICLE WHILE
UNDER INFLUENCE OF**

Dear Sir:

I am in receipt of your letter of the 9th instant, making inquiry as to whether the recent constitutional amendment concerning intoxicating liquors affects Section 7749, Compiled General Laws of Florida, 1927, making it unlawful for any person while in an intoxicated condition or under the influence of intoxicating liquor to such an extent as to deprive him of full possession of his normal faculties to drive or operate motor vehicles over the highways or streets in this State.

Article XIX of the State Constitution, relating to intoxicating liquors, as amended at the General Election of November 6, 1934, has particular reference to the manufacture, sale, transportation and possession of intoxicating liquors and does not in my opinion relate to or affect Section 7749 pertaining to the operation of motor vehicles while intoxicated or under the influence of intoxicating liquors.

BEVERAGE ACT (Chapter 16774 of 1935)

Find enclosed herewith copy of communication from this office to Hon. J. M. Lee, State Comptroller, under date of November 15, 1934, which is a general letter with reference to intoxicating liquors .

June 25, 1935.

INTOXICATING LIQUORS—HALF YEAR LICENSE

Dear Sir:

Answering your letter of the 24th Inst., I beg to say that House Bill No. 496, Chapter 16774, of the 1935 Legislature relating to the sale of intoxicating liquors or beverages does not appear to provide for a half year license until after October 1, 1935.

May 22, 1935.

INTOXICATING LIQUORS—DISPOSITION OF CONFISCATED LIQUORS

Dear Sir:

I am in receipt of your letter of the 9th inst., stating that your Sheriff has recently made raids and confiscated a quantity of government stamped liquors. You make inquiry as to whether by proper order of the Court the County dispose of these confiscated liquors, selling the same to duly authorized and licensed wholesale or retail liquor dealers in Florida and place the proceeds to the credit of your Fine and Forfeiture Fund.

In reply I beg to say the statutes at present in force with regard to confiscated liquors require them to be destroyed after a certain time and I do not know of any statute which authorizes the sale of such liquors. However, it might be well for you to await the action of the present Legislature with reference to such matters.

May 20, 1935.

INTOXICATING LIQUORS—SALE IN DRY PRECINCTS

Dear Sir:

Answering your two letters of the 10th and 19th instant, I beg to advise that Section 1215, General Statutes of 1906, prohibits the sale of intoxicating liquors in dry precincts even though the County as a whole may have voted wet. Your attention is also called to Chapter 6861, Acts of 1915, providing penalties for sale of intoxicating liquors in dry precincts.

BEVERAGE ACT (Chapter 16774 of 1935)

April 9, 1935.

BEVERAGES, NO LICENSE EXEMPTION

Dear Sir:

Section 12 of Chapter 15884, Laws of Florida, Acts of 1933, contains the following provision, to-wit:

"There shall be no exemption from the license taxes herein provided to any person, association of persons or corporation, any other law to the contrary notwithstanding."

Until the Legislature amends or repeals the provision quoted above, there can be no exemption from payment of the license tax provided for by the chapter governing the sale of beer, wines, etc.

March 15, 1935.

INTOXICATING LIQUORS—MANUFACTURE OF WINES FOR HOME CONSUMPTION

Dear Sir:

I have your letter of the 9th instant, making the following inquiry:

"Can individuals make wines for home consumption and if so of what alcoholic content and quantity?"

In reply I beg to say I find no statute limiting the quantity or alcoholic content of wines made for home consumption in so-called "wet" counties.

With reference to so-called "dry" counties, I refer you to Section 2 of Chapter 7283, Laws of Florida, Acts of 1917, making it unlawful to manufacture alcoholic liquors, including wines, but containing the following provision: "Provided further, that nothing in this Act shall prohibit the manufacture by any one family of domestic wines for family use in quantities not exceeding five gallons in any one year." This statute appears to limit the quantity of wines produced for home consumption in "dry" counties, but no reference is made to the alcoholic content of such wines.

February 20, 1935.

INTOXICATING LIQUORS—BEVERAGE LICENSE FOR SELLING BEER AND WINE WHEN SERVED WITH MEALS

Dear Sir:

I am in receipt of your letter of the 15th inst., the second paragraph of which reads as follows:

BEVERAGE ACT (Chapter 16774 of 1935)

"If a hotel serves wine and beer with meals and does not charge more than the regular price for such meal, is it necessary for them to obtain a license under Chapter 15,884?"

In reply your attention is called to the following language contained in 33 C.J. 591, Intoxicating Liquors, 209:

"But to establish an illegal sale it is not necessary to show * * * that the liquor should be the only article transferred between the parties, or that the price paid for it should be severable from that paid for other things included, in the same purchase."

Your attention is further called to the following language in 33 C.J. 594, Intoxicating Liquors, 216:

"In any case, where a sale or gift of liquor would be contrary to law, the Court will discountenance any trick, artifice, or subterfuge intended to evade its terms."

Your attention is also called to 33 C.J. 592, Intoxicating Liquors, 210, containing the following language:

"Furnishing intoxicants to boarders with their meals has been held to constitute a sale."

See also *Skermetta v. State*, 107 Miss. 429, 65 So. 502, the headnote to which case reads as follows:

"A boarding house keeper, who, as a part of the dinner serves beer or wine to his boarders who pay a specific sum per day for board, is guilty of selling liquor."

The first paragraph of Section 1 of Chapter 15,884, Acts of 1933, regulating the manufacture and sale of malt and vinous beverages, reads as follows:

"That any person, association of persons, or corporation before engaging in the business of manufacturing, selling, bartering or exchanging or in any-wise dealing in or causing or being concerned in the manufacture, sale, barter, or exchange of any malt or vinous beverages commonly known as beer, porter, ale, wine or fruit juices, containing more than one-half of one per centum of alcohol, as are not prohibited by the laws of this State, shall, before engaging in any such business, file under oath with the Tax Collector of the County in which the place of business of each such person, association of persons, or corporation shall be located, a written or printed application for a license to conduct such a business, said application to be made upon forms to be provided to the Tax Collector by the Comptroller."

BEVERAGE ACT (Chapter 16774 of 1935)

In view of the above, it is my opinion that a hotel serving wine or beer with meals and not charging more than the regular price for such meals when beer and wine are served therewith, is nevertheless selling or dealing in wine or beer and would be subject to a license therefor under Chapter 15,884, Acts of 1933.

February 9, 1935.

INTOXICATING LIQUORS—PERMITS

Dear Sir:

I am in receipt of your letter of the 7th instant, relative to application for permit to sell intoxicating liquors under Sections 1222, et seq., General Statutes of 1906. You call attention to the fact that said Sections were repealed by Chapter 7290, Acts of 1917.

In reply your attention is called to the case of State ex rel. Church vs. Yeates, et al., 74 Fla. 509, 77 So. 262, holding said Chapter 7290, Acts of 1917, invalid as a whole. Enclosed find herewith copy of an opinion from this office to Hon. J. M. Lee, State Comptroller, under date of November 15, 1934, which gives my views with reference to securing permits to sell intoxicating liquors.

With kindest regards, I am

February 8, 1935.

INTOXICATING LIQUORS—CORPORATIONS TO MANUFACTURE

Dear Sir:

I am in receipt of your letter of the 26th ultimo, making inquiry if it is within the power of the Legislature of Florida to grant a franchise to a corporation for the distillation of spiritous liquors.

In reply to your inquiry I quote you part of Section 2 of Article XIX of the State Constitution, as amended at the General Election of November 6, 1934, reading as follows:

"The power of the Legislature to provide necessary laws to carry out and enforce this Article shall include the right to provide for manufacture or sale by private individuals, firms and corporations or by the State or by Counties, Cities or political sub-divisions, or by any governmental commission or agency to be created for that purpose."

February 8, 1935.

INTOXICATING LIQUORS—POSSESSION

Dear Sir:

I am in receipt of your letter of the 2nd instant, in which you state that the Sheriff of your County recently caught a man in Chipley who had about a gallon of whiskey in his car and that the question arises as to whether or not the man is guilty of any criminal offense by reason of his possession of said liquor, there being no evidence of sale.

In reply to your inquiry I beg to say I do not know of any statute effective on December 31, 1918, prohibiting the possession of liquor by an individual for his own personal use without any intention of sale or other violation of the law relating to intoxicating liquors. Section 12 of Chapter 7283, Acts of 1917, prohibits the receipt of intoxicating liquors for storage, distribution or on consignment for another.

February 11, 1935.

INTOXICATING LIQUOR—SALE IN WET COUNTY IN PRECINCT
VOTING DRY—CONSTITUTION, ARTICLE 19.

Dear Sir:

This confirms my wire of even date wherein I advised as follows:

"Retel date I ruled on December 10 that present Article 19 places question on countywide basis and omits provision for dry precincts in old Article 19 of Constitution of 1885 stop. Therefore if county votes in favor of sale of intoxicating liquors such sale may take place in any election precinct in the county regardless of whether that precinct has voted for or against such sale stop With kindest regards."

I enclose herewith copy of my prior opinion of December 10, 1934, the last paragraph of which states the basis for my ruling.

February 7, 1935.

INTOXICATING LIQUORS—STATUTES NOW EFFECTIVE.

Dear Sir:

I am in receipt of your letter of the 6th instant, making inquiry as to what laws you should be governed by in filing prosecutions in liquor cases.

In reply your attention is called to Article XIX of the State Constitution, as amended on November 6, 1934, Section 2 of which contains this language:

BEVERAGE ACT (Chapter 16774 of 1935)

"All laws relating to intoxicating liquors, wines and beer which were in effect on December 31, 1918, unless changed by the Legislature by laws expressly made effective concurrently with this amendment, shall, as so changed become effective with this Article and shall so remain until thereafter changed by the Legislature."

Answering your inquiry with reference to the application of the Revised General Statutes of 1920, I beg to say the same would not apply unless effective on December 31, 1918.

A compilation of the laws relating to intoxicating liquors, as of December 31, 1918, has been prepared by Hon. Wm. Blount Myers of the Tallahassee Bar and has been printed by Rose Printing Company, Publishers, Tallahassee, Florida. This publication, I understand, sells for \$1.50 and would doubtless be helpful to you in your problems. This office has no interest or connection either with the compilation or sale of this book but I thought it might be helpful to you to know there is such a compilation.

January 3, 1935.

INTOXICATING LIQUORS

Dear Sir:

I am in receipt of your letter of the 10th ultimo, calling attention to my letter to _____ of Baltimore, Maryland, under date of December 8th, in which the following statement was made: "In reply I beg to say shipment may be made to said party if he is a so-called 'wet' county and precinct. If, however, he is in a so-called 'dry' county or a 'dry' precinct in a 'wet' county, shipment could not be made to this party except under the provisions of paragraph 2, Section 5, Chapter 7284, Laws of Florida, Acts of 1917."

In reply I beg to say the above quoted statement in my letter should have added thereto the following words: "as amended by Chapter 7285, Acts of 1917, or under the provisions of Section 4, Chapter 7733, Acts of 1918".

Our Supreme Court in the case of *Ex Parte Francis*, 76 Fla. 304, 79 So. 753, held Chapter 7284, above mentioned, to be unconstitutional. The decision seems to be based upon the general provisions of said Act prohibiting transportation and possession of intoxicating liquors. Paragraph 2 of Section 5 of said Act appears to be an exception to the general provisions of the Act and no particular reference is made by the Court to this exception. Neither is there any reference made to Chapter 7285, amending said Section 4 of Chapter 7284. Under this situation, I am not prepared to say it was the purpose of our Supreme Court in declaring Chapter 7284 invalid to also declare paragraph 2 of Section

BEVERAGE ACT (Chapter 16774 of 1935)

5 of said Act, as amended by Chapter 7285, passed in 1917, to be invalid. However, the safer statute to follow with reference to shipments of intoxicating liquors into dry counties or dry precincts of wet counties would be Section 4 of Chapter 7733, Acts of 1918.

July 10, 1935.

INTOXICATING LIQUORS—HOUSE BILL NO. 496, CHAPTER 16774,
1935, VARIOUS QUESTIONS ANSWERED

Dear Sir:

I am in receipt of your letter of the 5th instant, making certain inquiries with reference to House Bill No. 496, Laws of Florida, Acts of 1935, relating to beverages. The several inquiries will be answered in regular order.

Q.1.—Whether or not vendors, who have taken out licenses under 75% provision, providing for sales of liquors for consumption off the premises, may sell beer for consumption on premises, under same license.

You will note that Section 5 of said Act provides for licenses on and after October 1, 1935, and that Section 8 (a) provides for licenses between the effective date of said Act and October 1, 1935. You will note that Section 8 (a) providing for licenses to be obtained between now and October 1, 1935, provides for no such restriction as appears in paragraph III of Section 5 relating to licenses after October 1, 1935.

It is my opinion that vendors having a license under Section 8 (a) of said Act or under prior laws may sell beer or other liquors for consumption on the premises until October 1, 1935.

It is also my opinion that on and after October 1, 1935, all vendors of beverages must secure a license under Section 5 of House Bill No. 496 and that no vendor will be entitled to more than one license under said Section. It, therefore, follows that after October 1, 1935, a licensee under paragraph III of Section 5 will be authorized to sell beverages only in sealed containers for consumption off the premises where sold. Such licensee would not be authorized to sell beer or any other beverage for consumption on the premises under such license.

Q.2.—Same as above, where vendor, in addition to above license, takes out regular license authorizing sale of beer and wines for consumption on premises, may sell beer for presence consumption in same room where packaged hard-liquors are sold for consumption off premises.

Answer to Question 1 above applies to Question 2.

BEVERAGE ACT (Chapter 16774 of 1935)

Q.3.—Where vendor has already, under 1933 Law, license to sell beer, and obtains 75% new vendor's license as to hard-liquor in package, may continue to sell beer for consumption on premises in same room hard-liquor is sold.

Answer to Question 1 also applies to Question 3. The conditions mentioned in Question 3 can not exist for the reason that all licenses now in force will expire on October 1, 1935, and only one license at that time can be obtained under Section 5 of said Act.

Q.4.—Where, as in Lake County, issuance of license to sell hard-liquor for consumption on premises is prohibited by Special Act, vendor may sell beer under separate beer license, for consumption on premises in same room as hard-liquor is sold.

Chapter 16,777, Laws of Florida, Acts of 1935, which applies only to Lake County, provides that no license shall be granted to sell alcoholic beverages other than for consumption off the premises where sold.

Section 4 of Chapter 16,777 provides that "alcoholic beverages", as used in said Act, shall not include beer or other malt drinks of alcoholic content of less than 14% by volume nor wines, regardless of alcoholic content. It is my understanding that Lake County is what is known as a "wet" county. It, therefore, follows that a vendor of beverages in said county after October 1, 1935 can secure a license only under paragraphs II or III of Section 5 of House Bill No. 496. If the vendor secures a license, under paragraph II of said Section, beverages containing alcohol of more than 1% and not more than 14% by weight and wines, regardless of alcoholic content, may be sold in Lake County for consumption on the premises. If the vendor secures a license under paragraph III of Section 5 neither beer, wines or any other beverage may be sold in Lake County except for consumption off the premises where sold.

July 9, 1935.

**INTOXICATING LIQUORS—HOUSE BILL NO. 496, CHAPTER 16774
OF 1935—MUNICIPAL AUTHORITY**

Dear Sir:

I am in receipt of your letter of the 1st instant making a number of inquiries with reference to House Bill No. 496, Laws of Florida, Acts of 1935, which is an Act regulating and taxing the manufacture, distribution and sale of beverages containing more than 1% of alcohol. Your questions as stated in your letter will be considered in regular order.

1. Can incorporated cities and towns pass ordinances that will in effect prevent the sale of beverages as defined by the law for consumption on premises?

BEVERAGE ACT (Chapter 16774 of 1935)

In the last paragraph of Section 5 of the above mentioned Act incorporated cities and towns are authorized to establish zoning ordinances restricting the location of places of business of licensees under said Act. The last paragraph of Section 15 provides that nothing in the Act shall be construed to affect or impair the right of an incorporated town or city to enact ordinances regulating the hours of business and locations of places of business and providing sanitary regulations therefor.

In my opinion such zoning and regulatory ordinances must be reasonable in their nature and cannot go to the extent of prohibiting sales of such beverages in such city or town whether sold for consumption on the premises or not.

2. Are the following spirituous liquors containing 14% or more of alcohol by weight free from the stamp tax; Sales to Government owned and operated stores, salesman's samples and samples given out by distributors?

Section 9, paragraph (d), requires a gallonage tax on beverages containing 14% or more of alcohol if sold for re-sale or consumption. Since the tax appears to be a tax on sales it does not appear that a salesman's samples and samples given out by distributors would be subject to the tax.

Further answering Question 2 it is my opinion that beverages sold to Federal Government owned and operated stores are not subject to the stamp tax. See *Panhandle Oil Co. v. Miss.*, 277 U. S. 218, 72 L. Ed. 857. See also 26 R. C. L. 95, Taxation 71.

3. In those cities and towns that prevent the sale of spirituous liquors on Sunday, may a "consumption on premises" place that operates a restaurant in connection with his liquor business operate his restaurant on Sunday provided he does not sell liquor?

Your attention is called to paragraph (f) of Section 11 and the last paragraph of Section 15 relating to the sale of beverages for consumption on the premises and the powers of incorporated cities and towns. I find nothing in the Act to prohibit a vendor of beverages for consumption on the premises, operating a restaurant in connection therewith, from operating his restaurant on Sunday provided he does not sell such beverages on Sunday.

4. May an out of State manufacturer or jobber store liquor in their own name in bonded or other warehouses in Florida and make deliveries from such warehouses to their customers without qualifying under the Florida law as a distributor?

Section 2, paragraph 1, provides for applications for permits. Section 2, last paragraph, provides that no manufacturer, rectifier or distiller manufacturing, rectifying or distilling spirituous liquors in any State other than the State of Florida shall be licensed as a distributor.

BEVERAGE ACT (Chapter 16774 of 1935)

Section 3 provides there shall be no exemptions from the license taxes herein provided.

Section 4, paragraph (c), provides that no vendor shall purchase any of the beverages herein described from any person, firm or corporation not duly licensed under this Act.

Section 5, paragraph XI, subdivisions (f), (g) and (h), prescribes license fees of distributors.

Construing all of the above provisions of the Act together it appears that all distributors of the beverages mentioned in the Act are required to procure a license under the Act, and it is my opinion that an out of the State manufacturer or jobber storing liquor in their own name in bonded or other warehouses in Florida and making deliveries from such warehouses to their customers in this State must procure a license as a distributor. See *Am. Steel & Wire Co. vs. Speed*, 192 U. S. 500, 47 L. Ed. 538. See also 26 R. C. L. 122, Taxation 98.

5. On and after October 1st, 1935, may a railroad obtain a license to sell beer and/or wine under sub-section I and II of Section 5 or must they purchase the license provided for under VIII of Section 5?

Section 5, paragraph I to VII $\frac{1}{2}$ prescribes licenses for vendors generally. Paragraph VIII of the same Section prescribes licenses for operators of railroads and sleeping cars in the State. This appears to be a specific classification by the statute as to railroads or sleeping cars and it is my opinion that railroads or sleeping cars can not procure a license under the provisions of Paragraphs I and II of Section 5, but can procure a license under the provisions of Section VIII. In this connection it will be noted that the Statute makes other special classifications. See paragraph IX as to operators of steamships or steamship lines, busses and airplanes. See also paragraph X relating to social clubs and paragraph XI relating to caterers at horse and dog racing tracks.

September 22, 1936.

INTOXICATING LIQUORS—MUNICIPAL REGULATIONS OF HOURS
AND PLACE OF SALE OF 3.2 BEER

Dear Sir:

I am in receipt of your letter of the 17th instant making the following inquiry:

"Do cities have the authority under Chapter 16774, Acts of 1935, to regulate the hours of sale and the places where beverages containing not more than 3.2% of alcohol by weight are sold?"

BEVERAGE ACT (Chapter 16774 of 1935)

In reply your attention is called to the last paragraph of Section 15 of the Beverage Act, Chapter 16,774, Laws of Florida, Acts of 1935, relating to the above matter, reading as follows:

" * * * * Nothing in this Act contained shall be construed to affect or impair the power or right of any incorporated town or city of the State hereafter to enact ordinances regulating the hours of business and locations of places of business, and prescribing sanitary regulations therefor, of any licensee hereunder within the corporate limits of such city or town."

In this connection your attention is further called to 15 R. C. L. 266, Intoxicating Liquors, 20, containing the following language:

"In measuring the power to prohibit traffic in nonintoxicating beverages a distinction is to be observed between those which are nonalcoholic and those which are nonintoxicating though they contain some alcohol. The one is usually a harmless article which can in no way injure the peace and morals of society; the other is or may be harmful, in that it may stimulate the appetite for alcoholics, or may be a means of evading prohibitory laws.
* * * *"

The above quoted statutory provision removes restrictions from cities and towns in the matter of regulating the hours of sale and places where alcoholic beverages are sold and would appear to be a grant of permission to cities and towns to make such regulations as to alcoholic beverages without regard to the alcoholic content of such beverages. Furthermore it would appear that keeping in mind the distinction between non-alcoholic and non-intoxicating beverages containing some alcohol and keeping in mind the removal of restrictions from cities and towns to regulate the hours and place of sale of beverages, the general welfare clause contained in the charters of most cities and towns would authorize regulations for such purposes with reference to beer containing not more than 3.2 alcohol regardless of its statutory non-intoxicating qualities.

September 30, 1936.

**COLLECTION OF DELINQUENT EXCISE TAX UNDER
CHAPTER 15884, ACTS OF 1933**

Dear Sir:

I have your letter requesting me to advise you if the State Beverage Department may be allowed the usual eight percent for administration out of collections of delinquent excise taxes due under Senate Bill No. 427, Chapter 15884, Acts of 1933.

BEVERAGE ACT (Chapter 16774 of 1935)

It is my opinion that your Department is not entitled to eight percent of the delinquent taxes collected under Chapter 15884 for administration purposes.

Section 7 of Chapter 15884, Acts of 1933, provides as follows:

"The salaries and expenses of supervisors and all other necessary costs or outlays incident to this Act or necessary for the enforcement thereof are hereby appropriated out of the license fees and taxes collected hereunder, and no other appropriation whatsoever shall be made therefor."

It is my opinion that under the above quoted Section, you are entitled to all necessary costs or outlays incident to the enforcement of collection of the delinquent taxes. Upon presentation to the State Treasurer of an itemized list of the Department's expenses in making these collections, he would be authorized to transfer to your account the money for the expenses so incurred.

November 30, 1936.

INTOXICATING LIQUORS—ADVERTISEMENT—CIRCULARS
AND CARDS—GIFTS

Dear Sir:

I am in receipt of your letter of the 27th instant enclosing communication to you under date of the 23rd instant from Hon. _____ of Miami, Florida, enclosing communication relative to a feature of the advertising campaign of Gold Top Brewing Corporation of Hialeah and the "Mystery Man" circular and card. The circular and card advertise that a "Mystery Man" will give a silver dollar to persons approached when they recommend Gold Top Beer and Gold Top Ale.

Inquiry is made is such advertising device is a violation of the 1935 Florida Liquor Law, Chapter 16,774, Laws of Florida, Acts of 1935, and whether such advertisement by said corporation is subject to the control of the Beverage Department and its agents under said liquor law.

In reply I beg to say that I find nothing in said statute relating to such practice and I do not find anything in said statute authorizing the Beverage Director, or his agents, to exercise any authority with reference to such practices

I am returning herewith communication addressed to you by Mr. _____, but I am retaining copy of the letter enclosed therewith, together with copy of said "Mystery Man" circular and card.

SECTION 3

ALCOHOL

January 21, 1935.

INTOXICATING LIQUORS—STATUTES IN EFFECT, ADVERTISEMENTS, PROOF ALCOHOLIC CONTENT

Dear Sir:

I am in receipt of your letter of the 27th ultimo, relative to intoxicating liquors and making inquiry if certain specific statutes are now in effect.

Your attention is called to Section 2 of Article XIX, as amended in the General Election on November 6, 1934, reading in part as follows:

"The Legislature shall provide by general or special or local Legislation laws to carry out and enforce the provisions of this Article. All laws relating to intoxicating liquors, wines and beer which were in effect on December 31, 1918, unless changed by the Legislature by laws expressly made, effective concurrently with this amendment, shall as so changed become effective with this Article and shall so remain until thereafter changed by the Legislature."

The above quoted provision making effective all laws relating to intoxicating liquors, which were in effect on December 31, 1918, does not specifically state that laws passed subsequent thereto shall not be effective, but the above quoted language, when read as a whole, indicates that no laws relating to intoxicating liquors, effective after December 31, 1918, should be effective.

Answering your inquiries with reference to specific statutes, I beg to say Section 3558, General Statutes of 1906, as amended by Chapter 5688, Acts of 1907, appears to be in effect; that Chapter 7838, Acts of 1919, does not appear to be in effect; that Section 7624, Compiled General Laws of Florida, 1927, originally Section 13 of Chapter 7736 of 1918, made effective on January 1, 1919 by Section 24 of said Act, does not appear to be in effect at this time.

In answer to your inquiry with reference to newspaper advertisements of intoxicating liquors, I am enclosing you herewith copy of letter from this office to Mr. _____, Jacksonville, Florida, under date of December 18, 1934.

I am also enclosing copy of communication from this office to Hon. J. M. Lee, State Comptroller, under date of November 15, 1934, with reference to permits and licenses to sell liquor.

Answering your inquiry relative to proof of the alcoholic content of intoxicating liquors in criminal proceeding, I beg to say that it does not

ALCOHOL

appear that proof must be made by chemical analysis. However, from a practical standpoint it is rather difficult to make such proof otherwise.

A compilation of statutes relating to intoxicating liquors has recently been compiled by the Florida Emergency Relief Administration and I have requested Mr. _____, who is connected therewith, to forward you a copy of this compilation which you will no doubt find helpful in your official duties.

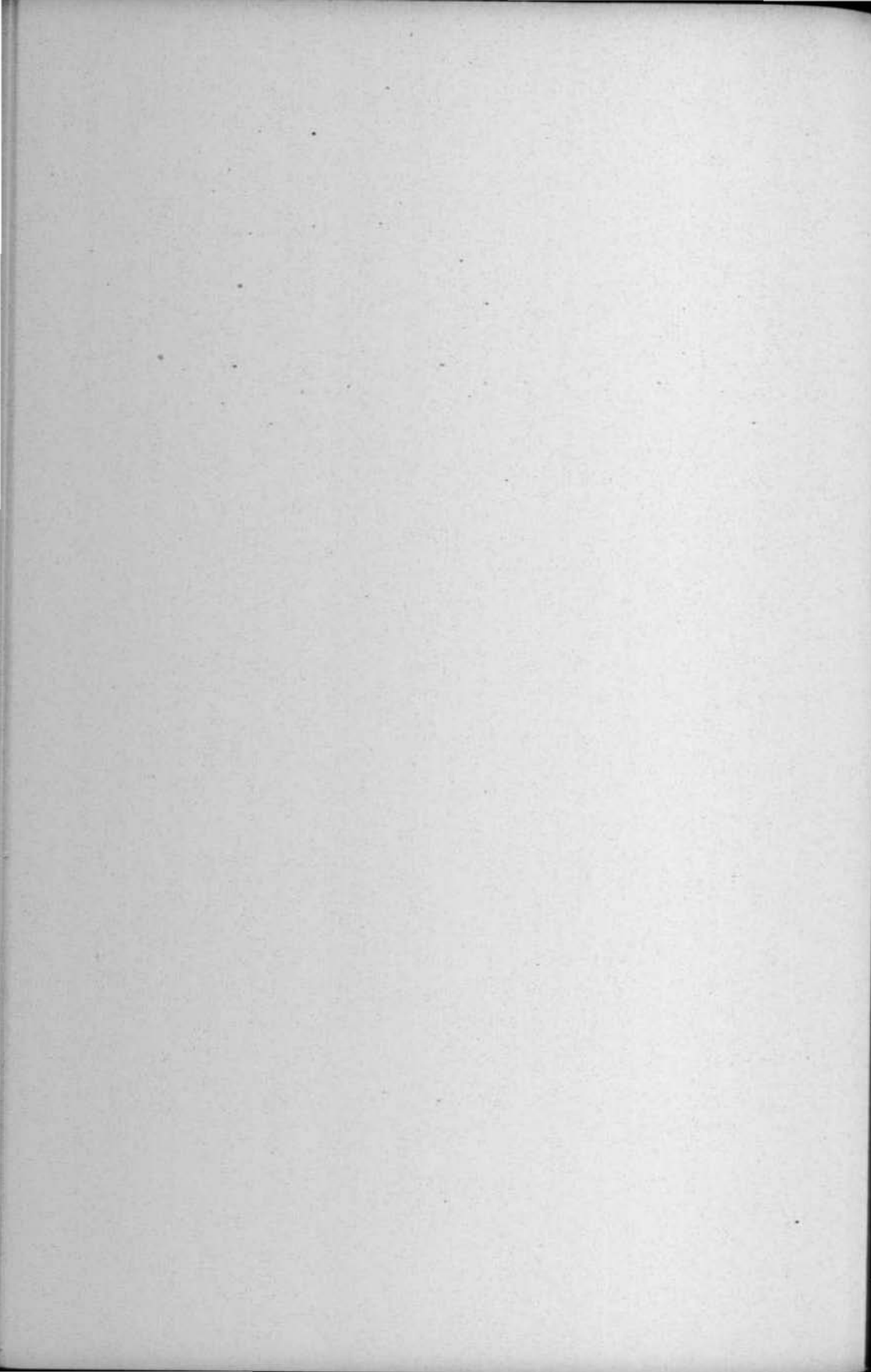
August 21, 1936.

INTOXICATING LIQUORS—CONSTRUCTION OF WORDS "RAW
MATERIAL" IN SECTION 4, SUBSECTION (a),
CHAPTER 16774—ALCOHOL

Dear Sir:

This is in reply to your inquiry of August 20, as to whether or not alcohol of 190 proof, which has to be distilled before entering into the manufacture of gin, should be legally classified as "raw material" within the provisions of Section 4, Subsection (a) of Chapter 16774, Laws of Florida, Acts of 1935.

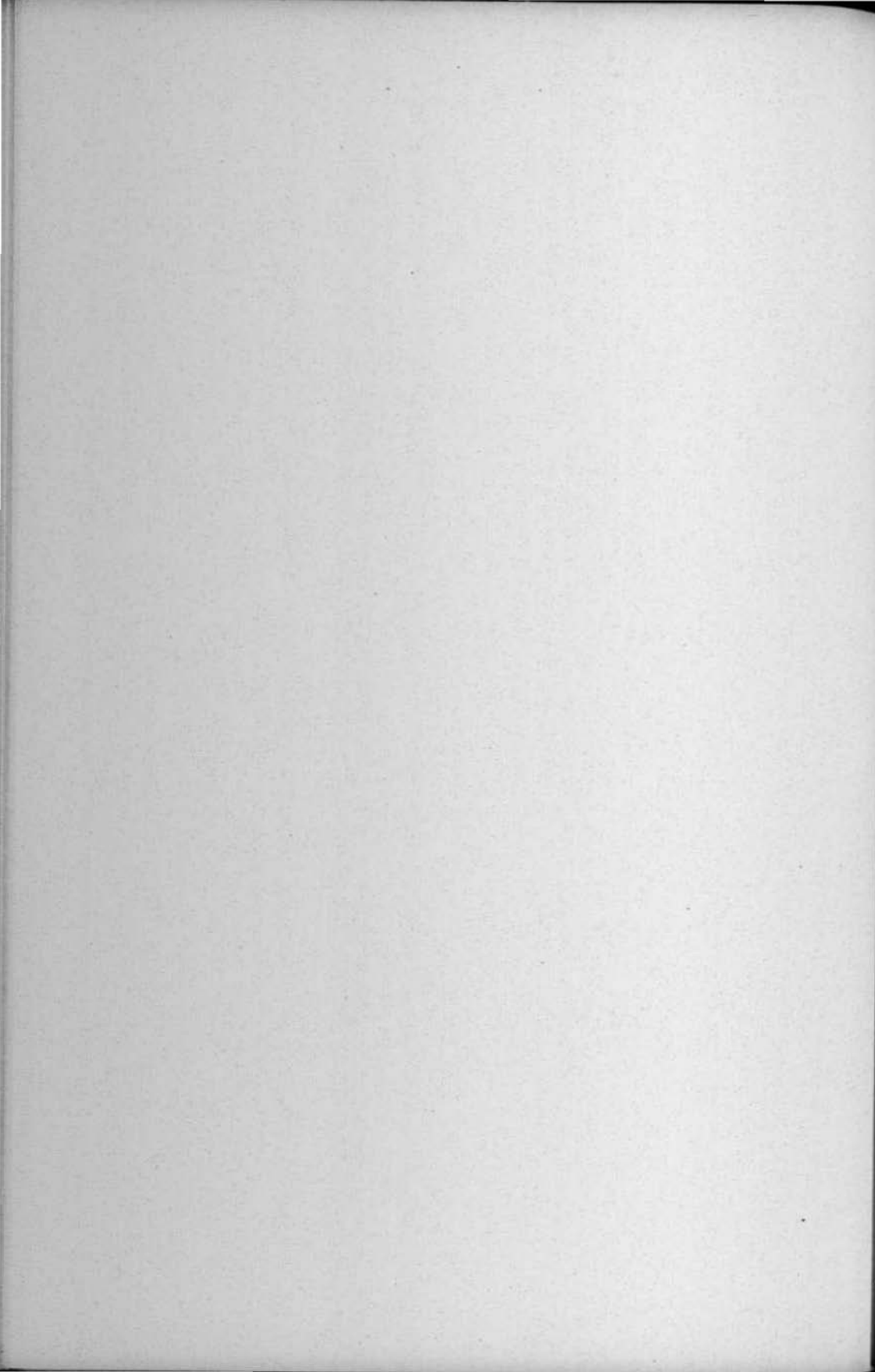
It is my opinion that such alcohol should be classified as a "raw material" under the provisions of said statute.



CHAPTER VI

ELECTIONS

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ELECTIONS

SECTION 1

GENERAL

September 28, 1936.

ELECTIONS—PAYMENT OF POLL TAXES BY PERSONS RESIDING IN STATE ONLY A YEAR PRIOR TO ELECTIONS

Dear Sir:

This is in reply to your letter of September 25.

The answer to your inquiry is to be found in the following provision contained in the 6th paragraph of Section 248, Compiled General Laws of Florida, 1927:

"Provided, that no person who has not been in this State one year previous to any general election, shall be required to pay more than one year's poll taxes: Provided, that no person who has only been a resident of this State one year must first produce a poll tax receipt from the State from which they moved from, before being permitted to vote."

September 25, 1936.

ELECTIONS—LAST DAY TO REGISTER AND PAY POLL TAXES FOR ELECTION OF NOVEMBER 3, 1936

Dear Sir:

This is in reply to your letter of September 25, requesting my opinion concerning the last day for paying poll taxes and registering for the November election.

Under date of August 6, 1936, I wrote to Honorable _____, supervisor of Registration at Clearwater, advising him that the last day for registering would be October 17, 1936, and the last day for paying poll taxes would be October 10, 1936. I later discovered that my first letter to Honorable _____ contained a clerical error and under date of August 29, 1936, I wrote him stating that the date "October 17, 1936" should be changed to read "October 10, 1936". This will confirm to you that October 10, 1936, is the last day for registering and also the last day for paying poll taxes.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
GENERAL

September 17, 1936.

ELECTIONS—METHOD OF VOTING FOR PRESIDENT
WHEN ELECTORS NOT ON BALLOT

Dear Sir:

This is in reply to your letter of September 15.

You may vote for any person you please for President of the United States in the following manner:

Select not more than seven persons, who if elected as presidential electors will vote for your candidate, in the Electoral College, write in the names of those persons on the blanks provided for that purpose on the general election ballot, and place a cross mark (X) before said name or names.

See Section 331, Compiled General Laws of Florida, 1927.

September 11, 1936.

ELECTIONS—PRINTING NAMES ON BALLOTS

Dear Sir:

This is in reply to your inquiry concerning the provisions of law dealing with the printing of the names of candidates on the ballots. I call your attention to Section 317, Compiled General Laws, 1927 (Section 261, Revised General Statutes), which reads as follows:

"Order of titles and names on ballots.—The ballots printed in accordance with the provisions of this law shall contain the names of all candidates nominated as hereinbefore provided who have not declined. The names of all candidates for the same office shall be printed together, irrespective of party. But the order in which the titles to the several offices to be filled shall be arranged upon the ballots shall be left to the discretion of the officer charged with the printing of the said ballots."

The statutory provision above set forth does not specifically require the names of candidates to be printed in alphabetical order. Such has been the practice, however, for many years and the courts are inclined to lend their support to an established administrative construction of the laws.

GENERAL

September 11, 1936.

SHERIFFS—APPOINTMENT OF SPECIAL DEPUTIES AT LARGE
TO MAINTAIN ORDER—COMPENSATION*Dear Sir:*

This is in reply to your letter of September 10, enclosing letter of Honorable _____, Attorney of Tampa, with reference to the claim of Mr. _____, former sheriff of Hillsborough County, to be allowed credit for compensation paid to special deputies at large who served in Hillsborough County during the Primary Elections of June, 1932, but who were not assigned to any particular precincts. You call my attention particularly to the paragraph of Mr. _____ letter which reads at follows:

"The situation in this county, created by the intense partisanship of different factions in connection with primary elections, in the past few years has been such that almost anything could happen during a primary election. This, we think, is common knowledge throughout the State and in our opinion justified having enough reliable men available to maintain order. These special deputies were not stationed at particular polling places during the primary elections "in which their services were required, but were stationed at different points and continually shifted from precinct to precinct for the purpose of disbursing and controlling the crowds which congregated in the various places in Hillsborough County, as well as at the polls, there sometimes being more than 1000 people assembled in different precincts in the county, in many cases with the avowed purpose of taking charge of a particular polling place, or polling places, in the interest of the faction they supported."

Under date of August 18, 1936, I gave you my opinion to the effect that Mr. _____ would not be allowed credit for compensation of special deputies particularly assigned to precincts in Hillsborough County in said primary elections. In the case of special deputies at large who are not assigned to any particular precinct but whose duty is to preserve law and order in the community, a different situation exists; inasmuch as Mr. _____ did not exceed the limitations of his budget in appointing such special deputies at large, he had the right to appoint same and is entitled to include their compensation as a proper expense of administering his office.

September 9, 1936.

ELECTIONS—REGISTRATION OF PERSONS WHO CANNOT
READ OR WRITE

Dear Sir:

This is in reply to your letter of August 31, in which you inquire whether there is any law prohibiting a supervisor of registration from registering a person who can neither read nor write.

Article VI, Section 3, of the Constitution of Florida reads as follows:

"Every elector shall at the time of his registration take and *subscribe* to the following oath: 'I do solemnly swear or affirm that I will protect and defend the Constitution of the United States and of the State of Florida, that I am twenty-one years of age, and have been a resident of the State of Florida for twelve months, and of this county for six months, and I am qualified to vote under the Constitution and laws of the State of Florida.'" (Italics supplied.)

Section 257, Compiled General Laws of Florida, 1927, reads as follows:

"Oath and identification of elector for registration.—Upon application for registration each elector shall be required to take and subscribe the following oath: 'I do solemnly swear (or affirm) that I will protect and defend the Constitution of the United States and of the State of Florida; that I am twenty one years of age and have been a resident of the State of Florida for twelve months, and of this county for six months; that I am a citizen of the United States, and that I am qualified to vote under the Constitution and laws of the State of Florida.' The supervisor of registration and district registration officers provided for, are hereby authorized and required to administer this oath, and the elector shall also be required, under oath to be administered by the registration officer, to give such description of himself as will be sufficient to clearly identify his person with the act of registration."

You will note that the word "subscribe" is contained in both the constitutional provision and the provisions of the statute. The generally accepted meaning of the word "subscribe" is clearly indicated by the following definition contained in Webster's Twentieth Century Dictionary:

"To sign with one's own hand."

It is my opinion that the Constitution and Laws of Florida require a person seeking to register as a voter to be able to sign his name to the prescribed oath.

GENERAL

August 25, 1936.

ELECTIONS—ORANGE COUNTY—CHAPTER 15629,
LAWS OF FLORIDA*Dear Sir:*

This refers to your communication of August 18, 1936, in which you state that Orange County operates under the provisions of Chapter 15629, Acts of 1931, so that registration offices are kept open for registration the year round, except as in said Act provided. You request that I advise you whether you should send out both the general election and primary registration books to the district registration officers, at the commencement of the registration of voters on the first Monday in September.

I beg to advise that you should, at such time, pursuant to the provisions of said Act, send out such books.

August 25, 1936.

ELECTIONS—BALLOT BOXES

Dear Sir:

Replying to your letter of August 18, 1936, permit me to say that Section 349 of the Revised General Statutes of 1920, being Section 406 Compiled General Laws of 1927, was amended by Chapter 13761, Acts of 1929. The law, as it now exists, provides that the poll lists and oaths of inspectors and clerks, together with all ballot boxes, ballots, ballot stubs, memoranda, and papers of all kinds used by inspectors and clerks, shall be transmitted sealed, by the inspectors, to the Supervisor of Registration, to be filed in his office, "and carefully preserved by him until after the next succeeding general election." The law regarding the preservation of the ballot boxes until after the next succeeding general election, in my opinion, would prevent you from emptying one set of boxes for use in the general election. Regrettable as it may be, that this will probably necessitate the purchase of another set of ballot boxes, I find no authority in law for emptying one set for use at such time.

August 22, 1936.

ELECTIONS—SUPERVISOR OF REGISTRATION—TRIPPLICATE
REGISTRATION BOOKS—PUBLICATION LIST OF QUALIFIED
ELECTORS MANDATORY*Dear Sir:*

In your letter of August 19, you inquire whether it is mandatory on the Supervisor of Registration under Section 287, Compiled General

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Laws of Florida, and subsequent acts, to make up three registration books for the general election so that each election district shall have three registration books. You also inquire what action, if any, could be taken against the Supervisor of Registration if he did not comply with this section.

It is my opinion that this provision of the law prescribes a mandatory duty for the Supervisor of Registration. This duty could be enforced in the courts by mandamus.

You also inquire whether it is mandatory upon the Supervisor of Registration to publish a list of qualified voters under Section 284, Compiled General Laws of Florida. My answer is also in the affirmative. In this connection you might consider my opinion under date of October 7, 1932, set forth in the Biennial Report of the Attorney General for the Years 1931-32, at pages 1045 and 1046 thereof.

July 18, 1936.

ELECTIONS—ELECTORS—REGISTRATION—RESIDENCE—
GOVERNMENT WORKERS

Dear Sir:

Replying to your favor of July 14th., permit me to say.

A person who has resided in the State of Florida for one year and in a county for six months, with full intent to make this State and the county in which he resides his permanent place of residence, may register to vote in the precinct in which his permanent place of residence is situated.

The counties are divided into voting precincts, and of course if a person has his permanent place of residence on a Federal Reservation which does not lie within an election precinct, I suppose such person would be in about the same situation as one who has his permanent place of residence in the City of Washington.

It has not been the policy of this office to encourage the registration of persons in Government work in this State to attempt to qualify as electors unless such persons could conscientiously subscribe to the Oath required of all registrants under the election laws of the State of Florida.

August 4, 1936.

QUALIFICATION OF ELECTORS TO VOTE—UNIVERSITY
OF FLORIDA STUDENTS

Dear Sir:

Replying to your favor of August 1st., permit me to say, Section 248 of the Compiled General Laws of 1927, prescribes the qualification

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of electors, and if a person applies to the Supervisor of Registration for registration as an elector for the General Election, and subscribes to the oath required by law, the registration officer must permit such person to register.

In view of the law as cited, I think it is largely a matter for the individual student at the University to decide for himself, whether or not he can conscientiously subscribe to the oaths prescribed by Section 3 of Article VI of the Constitution of the State of Florida, and the oath prescribed by Section 373, page 150 of the Compiled General Laws. The oath provided for by Section 3 of Article VI of the Constitution of the State reads as follows, to-wit:

"I do solemnly swear or affirm that I will protect and defend the Constitution of the United States, and the State of Florida. That I am 21 years of age, and have been a resident of the State of Florida for 12 months, and of this county for 6 months, and I am qualified to vote under the Constitution and laws of the State of Florida". The oath prescribed by Section 373 on page 150 of the Compiled General Laws reads as follows, to-wit:

"I having been first duly sworn, say, upon oath that the statement here entered opposite my name, as to my qualifications as an elector, are true".

See also page 149, First Division, Compiled General Laws, which is a part of Section 373, mentioned above.

August 8, 1936.

ELECTIONS—BALLOTS—BLANK LINES

Dear Sir:

Replying to your favor of August 6th., permit me to say, upon the General Election ballot there will be a blank line for electors to write in the name of a candidate for any office which is subject to be filled by election in the November General Election. There will, of course, be seven blank lines under the names of the Presidential Electors, and if a person does not desire to vote for any person whose name is printed on the General Election Ballot, but does desire to vote for some other person, the voter should write the name or names on the blank lines and put a cross mark in front of the name, that is, to the left of the name after it is written in on the ballot.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
GENERAL

October 2, 1936.

GENERAL ELECTIONS—BALLOTS—BLANK LINES

Dear Sir:

Replying to your favor of October 1st., permit me to say, there will be blank lines on the General Election ballot equal to the number of offices to be filled. The voter may write in the name of his choice and put a cross mark before the name written. The election officials are presumed to count and tally such votes the same as they would do if the name was printed on the ballot.

October 1, 1936.

PUBLICATION LIST OF QUALIFIED ELECTORS MANDATORY

Dear Sir:

Replying to your favor of September 29th., permit me to say, Section 284 of the Compiled General Laws of 1927 requires the Supervisors of Registration of the several counties of the State to have published a certified list of the registered and qualified electors of each election district prior to the General Election.

The Section is a mandatory requirement.

You ask to be advised regarding the penalty that might be imposed if you failed to have the list published. In reply permit me to say, that where an officer is required by law to perform a duty, his wilful failure to perform such duty subjects him to removal from office by the Governor.

October 3, 1936.

ELECTIONS—PUBLICATION LIST OF QUALIFIED VOTERS
MANDATORY

Dear Sir:

Replying to your favor of October 2nd., permit me to say the requirement that list of registered and qualified electors be published prior to General Election is mandatory.

}

September 30, 1936.

ELECTIONS—LAST DAY OF REGISTRATION AND PAYMENT
OF POLL TAXES

Dear Sir:

This is in reply to your request for my opinion concerning the last date for the payment of poll taxes and for registration for the election to be held on November 3, 1936.

Under the statutes of the State of Florida, to-wit: Sections 248 and 263, Compiled General Laws of Florida, 1927, the last date for both paying poll taxes and for registration for said election is October 10, 1936.

October 12, 1936.

ELECTIONS—VOTERS—REGISTRATION

Dear Sir:

Replying to your favor of October 9, permit me to say Section 257, Compiled General Laws, 1927, reads as follows, to-wit:

"Upon application for registration, each elector shall be required to take and subscribe the following oath: 'I do solemnly swear (or affirm) that I will protect and defend the Constitution of the United States and the State of Florida, that I am twenty-one years of age and have been a resident of the State of Florida for twelve months and of this county for six months; that I am a citizen of the United States and that I am qualified to vote under the Constitution and Laws of the State of Florida'. The supervisor of registration and district registration officers provided for are hereby authorized and required to administer this oath, and the elector shall also be required, under oath, to be administered by the registration officer, to give such description of himself as will be sufficient to clearly identify his person with the act of registration."

It appears from the section quoted above that the applicant for registration should be required to sign the oath quoted above. The word "subscribe" has been construed to mean the signing of a person's name; however, we find Baldwin's Century Edition of Bouvier's Law Dictionary cites Supreme Court opinions where it is said

"Subscribe may sometimes be construed to mean to give consent to or to attest."

October 24, 1936.

ELECTIONS—GENERAL—STICKERS ON BALLOTS, ETC.

Dear Sir:

Replying to your favor of October 23rd., in which you request me to answer several questions relative to the laws governing the holding of a General Election, permit me to say, I will answer your questions in the order in which you have propounded them.

(1) You ask to be advised whether or not stickers may be used on the General Election ballots. In reply to this question permit me to say, the use of stickers on General Election ballots would probably invalidate the ballots.

(2) In reply to your second question, permit me to say, that where the name of a person is written in on the General Election ballot, under the provisions of Section 331 of the Compiled General Laws, the cross mark must be made in the appropriate place, in front of, or to the left of the person's name.

(3) In reply to your third question, permit to say, Section 8161 of the Compiled General Laws of 1927, the same being Section 5897 of the Revised General Statutes, prohibits a voter taking into the election booth any mechanical device, ticket or memoranda, printed or written, other than the official ballot or ticket, to enable him to mark said ballot or ticket. This Act refers to the General Election and also to the Primary Election. See Section 2, Chapter 4536, Acts of 1897, and Acts subsequent thereto. The penalty for a person violating this provision is a fine of not less than ten nor more than one hundred dollars, or imprisonment for not more than three months.

(4) In reply to your fourth question, permit me to say, it appears that Section 8170, Compiled General Laws, relative to distribution of literature, etc. against a candidate on the day of election, pertains to the Primary Election, however, it seems to me that Section 8152, Compiled General Laws, prohibiting the corrupt influencing of an elector on the day of election, may apply to the General Election, inasmuch as said Section is Section 3 of Chapter 1637, Acts of 1868, which was enacted prior to the Primary Election law. You will observe that the Section provides a penalty to be imposed upon any person who by any corrupt means or device, either directly or indirectly attempts to influence any elector in this State in giving his vote or ballot, etc.

(5) In reply to your fifth question, permit me to say, Sections 341 and 342, Compiled General Laws, 1927, governs the powers and duties of the election inspectors, including those of the clerk of election. The clerk, of course, is a member of the election board, however, the law refers to action by the inspectors and clerk, and it is my view that the

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inspectors, of course, should not permit the clerk to do anything contrary to the laws governing the conduct of elections.

(6) In answer to your sixth question relative to the appointment and filling of vacancies on the board of inspectors for the General Election, permit me to say, this subject is covered by Section 305, 306 and 307 of the Compiled General Laws. You will observe that Section 307, Compiled General Laws, provides, as follows, to-wit:

"In case of the absence or refusal to act of any of the clerks or inspectors of election appointed by the Board of County Commissioners for any district or polling place, the qualified electors present favoring the ticket which the absent inspector, inspectors or clerk had been chosen to represent, shall choose from among their number one inspector, inspectors or clerk as will, together with the inspector, inspectors or clerk present constitute a board of four; provided, the inspector, inspectors or clerk so chosen shall, (if any such be present) represent the same political party that the absent inspector, inspectors or clerk would represent if present," etc.

You will observe that the law-makers evidently contemplated the possibility of there not being present a number of the political party of which the absent inspector, or inspectors refusing to serve, was a member of, hence the words in parenthesis which appears in the statute, and reads as follows: ("If any such be present"). It appears to me from the provision of the statute, that is, Section 307, that if on the day of the election one of the Democratic or Republican inspectors fails to appear or refuses at the time the polls are required to be opened, to act, the other inspectors or authorized to appoint in his place a member of either political party, provided, of course, such person is a duly qualified elector.

It is my opinion that once the board of inspectors has been duly organized according to law and has begun to conduct the election, that no other person has any authority to insist upon a change being made in the personnel of the board of inspectors.

You ask to be advised what the procedure should be in the event one of the inspectors become ill or gets tired and refuses to continue to act. In answer to this proposition, permit me to say, I think the procedure should be the same, and the inspectors should be governed by the same rule as that stated above, viz: where a member of the board fails to appear at the time for the opening of the polls.

(7) Replying to your seventh question, permit me to say that Section 341, Compiled General Laws, provides for the canvass of the ballots by the inspectors. Section 342 provides for a proclamation of the result and the returns, and we find in Section 342 a provision which reads as follows, to-wit:

"The canvass being completed the results shall be properly proclaimed. Duplicate certificates of the result of the election shall be

drawn up by the inspectors or clerk at each and every election district, which shall contain in words written, at full length, the name of each person voted for for each office, and the number of votes cast for each person for such office, and if any question shall be submitted to an election, such certificate shall also contain the number of votes cast for and against such question; which certificate shall be signed by the inspectors and clerk, and one of such certificates shall be by one of the inspectors delivered, without delay, securely sealed, to the Supervisor of Registration, and the other to the County Judge of the County".

The same Section contains a provision governing the disposition of the poll lists, oaths of the inspectors and clerks, ballot boxes, ballots, ballot stubs, etc., and the provision reads as follows, to-wit:

"The poll lists, oaths of the inspectors and clerks, together with all ballot boxes, ballots, ballot stubs, memoranda and papers of all kinds used by the inspectors and clerks in conducting such election shall also be transmitted, sealed up by the inspectors, with the certificates of the result of the election to the Supervisor of Registration to be filed in his office."

A construction of the provision last above mentioned appears to mean that one certificate shall be sealed up in the ballot box, together with the other papers and documents referred to. On the question of whose duty it is to deliver the ballot boxes with the papers and documents referred to sealed up therein to the Supervisor of Registration to be filed in his office, the section does not appear to be clear; however, I think a fair construction of the provision would be to say that at least one inspector should be designated to transmit the ballot box to the Supervisor of Registration, and that all of the inspectors should be permitted, if they so desire, to accompany the inspector designated to deliver the ballot box. We do not find a provision in the statute authorizing the Sheriff or any deputy to make delivery of the ballot box, nor to participate in the delivery thereof, nor do we find any provision for the payment of mileage to the Sheriff or his deputy for making such delivery. Nor do we find a provision for the payment of mileage to one or more of the inspectors for making delivery, and the question of whether or not mileage should be allowed to an inspector, or to inspectors for making delivery of the ballot box, depends upon the question of whether or not such expense may be allowed under the law. It may be that mileage for delivery of the ballot box would be allowed by the Board of County Commissioners from the funds designated "for expense of conducting election". It appears that the statute may contemplate a delivery of the ballot box by all of the inspectors, however, inasmuch as the statute is vague and indefinite on that point, we are not in position to say as a matter of law, that this duty can not be performed by one or more of the inspectors.

Trusting that I have answered your several questions satisfactorily, with best wishes and kind personal regards, I am

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PRIMARY

August 29, 1936.

ELECTIONS—SELECTION OF NOMINEE WHEN TIE VOTE AND
NO EXECUTIVE COMMITTEE

Dear Sir:

This is in reply to your letter of August 27.

When no county executive committee has been elected, it becomes the duty of the Chairman of the State Executive Committee to fill all such vacancies by appointment from among the members of the party residing in the election districts where the vacancies occur. See Section 361, Compiled General Laws, 1934 Supplement. The executive committee so appointed would then proceed, under Section 411, Compiled General Laws, 1934 Supplement, to select a nominee.

May 23, 1936.

ELECTIONS—PRIMARY—NOMINATIONS BY MAJORITY

Dear Sir:

I am just in receipt of your letter of the 22nd instant, in which you ask whether the nomination of supervisor of registration is made by a plurality or by majority in the primary.

Section 389 of the Compiled General Laws of Florida 1927 provides that the State Executive Committee may by resolution declare for the nomination of candidates for other than elective offices. The State Democratic Executive Committee by Resolution No. 1 duly certified to the Secretary of State, provided as follows:

"Section 5. That candidates of the Democratic Party of Florida shall be nominated in the Democratic primary to be held on the first Tuesday after the first Monday in June, 1936, in cases where no nomination is made then in the second primary to be held on the 4th Tuesday after the first Monday in June, 1936, for the following appointive offices, to-wit:

* * * * *

"g. County Supervisors of Registration whose terms of office expire in the year 1937, or prior thereto; * * *."

It appears, therefore, that under the resolution of the State Democratic Executive Committee, a majority is required to nominate for this office, as well as all the other non-elective offices which were included in this resolution.

PRIMARY

June 1, 1936.

ELECTIONS—ELECTORS—ASSISTANCE IN MARKING BALLOT

Dear Sir:

In response to your verbal request of this date for information regarding the manner in which assistance should be rendered to voters who require assistance at the polls, permit me to say:

Where a voter is given assistance in marking his ballot, at least two of the Inspectors should be present to assist him. The Inspectors of elections are only authorized to act as a board or body, and therefore, a majority at least of them should participate in action allowed to be performed by the Inspectors. In assisting voters to mark their ballots, the Inspectors are not allowed themselves to mark the ballot, except in the case of absolute necessity, such as physical inability of the voter to use his hands or complete blindness. In other words, in case of partial disability which might entitle a voter to assistance, the voter should help himself as far as possible. The Inspectors should inform the voter as to who the candidates are on the ticket, and let the voter indicate the candidate of his choice to be marked.

Section 332 of the Compiled General Laws provides that the voter may have the assistance of the "Inspectors". You will observe that the plural and not the singular is used in the statute. The statute also provides that the "Inspectors" shall retire to a booth with the voter and assist him in marking his ballot. Section 333 requires that all voters be excluded from hearing the transaction between the Inspectors and electors before the ballot is marked. In other words, the law requires the Board of Inspectors to assist voters who require assistance, and no individual Inspector has the right to give such assistance by himself.

May 5, 1936.

ELECTIONS—REGISTRATION—CHANGE OF PARTY AFFILIATION

Dear Sir:

Replying to your favor of May 2nd., in which you state that Mr. "A" registered in September 1934 for the General Election of that year, and that at that time he was under the distinct impression that he had registered as a Democrat, and had been previously registered as a Democrat in Palm Beach County. That he did on April 29th. 1936 file qualification papers for nomination as a candidate for County Commissioner and subscribed to the required oath before the Clerk that he was a Democrat, and in which you ask to be advised whether or not he is eligible as a candidate in the Democratic Primary, permit me to say:

Except in those counties where persons are required to register biennially under Section 310 of the Revised General Statutes, no person

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who is already a registered voter of the county has a right to change his party affiliations, except in the manner provided by Section 309 of the Revised General Statutes, which requires that such person in order to change his party affiliation shall make application in writing, duly signed by him, to the Supervisor of Registration at least 60 days before the day of the Primary, and upon such application being made, the Supervisor of Registration shall note the party affiliation upon the registration books, and furnish to the person requesting the change a certificate showing such change.

Every voter has ample time to change his party affiliation, and the 60 day period for so doing was deliberately fixed in order to prevent promiscuous changes just before the Primary, thereby causing confusion in the holding of the election.

April 29, 1936.

ELECTIONS—ABSENTEE BALLOTS—FOREIGN BORN WOMAN
MARRIED TO AMERICAN

Dear Sir:

Replying to your favor of April 27th., permit me to say there is no provision for a person who is outside the United States casting Absentee Ballot.

In reply to your second question I would state that a Foreign born woman married to an American citizen may vote in Florida, provided she has been married for one year and is otherwise qualified.

May 8, 1936.

ELECTIONS—VOTERS—MARRIED WOMAN REGISTERED UNDER
MAIDEN NAME BEFORE MARRIAGE

Dear Sir:

Replying to your favor of May 7th., in which you state that an unmarried woman registered in your county in May 1928, and that four years ago she married, and that her name has never been changed on the registration books, and in which you ask to be advised whether or not you are authorized at this time to change her name on the register, permit me to say:

When a woman registers under her name as a single person, her registration must be carried on the books in that name, notwithstanding the fact that she may marry and assume another name in which she pays her poll tax. There appears to be no authority for the Supervisor of Registration to change his registration books so as to show the mar-

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ried name of the woman in question. By this I do not mean that the woman may not vote merely because she has married since registering under her maiden name, but in order for her to satisfy the Inspectors of election that she is the identical person, who, under another name registered, she should produce some evidence for the election officials, such as a marriage certificate, to show that her name has been changed, and that she is the same person appearing on the registration books as an unmarried woman.

Of course, where the woman is known personally by the election Inspectors who knew her by her maiden name, and know that she is now married, I do not think the election Inspectors would require her to submit proof that she is the identical person.

May 16, 1936.

ELECTIONS—INSANE PERSONS—COURT ADJUDICATION OF
RESTORATION OF SANITY

Dear Sir:

Replying to yours of May 14th., permit me to say Section 248 of the Compiled General Laws of 1927 provides that the following classes of persons shall not be entitled to vote:

First. Persons not duly registered according to law.

Second. Persons under guardianship, including those kept in or confined in any public prison.

Third. Persons who are insane or idiotic.

Where a person has once been judicially adjudged insane, it is necessary for such person before he can be considered legally sane to have the Circuit Court adjudicate restoration of sanity.

May 7, 1936.

ELECTIONS—CONVICTS VOTING

Dear Sir:

I am in receipt of your letter of the 22nd ultimo making inquiry as to whether a person who serves 14 months in the Federal Penitentiary in Atlanta, Georgia, may vote and serve as an election inspector.

Section 4 of Article VI of the State Constitution provides that no person convicted of a felony by a Court of Record unless restored to civil rights shall be qualified to vote in any election.

Section 5 of Article VI of the State Constitution provides that the Legislature shall have power to exclude from every office within the

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State and from the right of suffrage all persons convicted of bribery, perjury, larceny or of infamous crime.

Section 248, Compiled General Laws of Florida, 1927, provides that no persons who may have been convicted of any felony by any Court of Record shall be entitled to vote.

Section 458, Compiled General Laws of Florida, 1927, provides that all persons convicted of bribery, larceny, perjury, or any other infamous crime, shall be excluded from every office of honor in this State and from the right of suffrage.

Section 8495, Compiled General Laws of Florida, 1927, provides that all persons who may receive full pardons from the Board of Pardons shall be entitled to all the rights of citizenship enjoyed by them before their conviction, whether the pardon is granted before or after the expiration of the sentence or payment of the penalty.

Section 2 of Article II of the United States Constitution provides that the President shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

If the party you have in mind was convicted and served time for any of the offenses mentioned in the above provisions of the State Constitution and statutes, he would not be authorized to vote or to serve as an election inspector unless he has had his civil rights restored.

May 27, 1936.

ELECTIONS—HOURS OF OPENING AND CLOSING POLLS

Dear Sir:

Replying to yours of May 26th., permit me to say, Section 309 of the Compiled General Laws of 1927, reads as follows, to-wit:

"The polls shall be opened at such voting places at 8 o'clock A.M. on the day of the election, and shall be kept open until sundown of the same day, the time to be observed for such opening and closing of the polls to be regulated by the customary time in Standard use in such locality. The Inspectors may, however, adjourn between twelve and one o'clock for half an hour. The Inspectors shall make public proclamation of the opening and closing of the polls, and the midday adjournment. During the adjournment the ballot box shall be kept in the possession of and in view of two of the Inspectors, who shall not have the key thereof, and during the election and canvass of the vote, ballot box shall not be concealed from the public".

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May 21, 1936.

ELECTIONS—DEPUTY SHERIFF—WHERE SERVICES MAY BE RENDERED

Dear Sir:

Replying to yours of May 20th., permit me to say, Section 339 of the Compiled General Laws of 1927 provides that:

"There shall be at each polling place in each election district a Deputy Sheriff, to be deputized for such purpose by the Sheriff of the County, who shall be required to be present during the whole time that the polls are kept open and until the election is completed, who shall be subjected to all lawful commands of the Inspectors, and who shall see that there is no interruption of good order. Such Deputy Sheriff shall have power, when necessary to maintain the peace, to summon a posse from among the bystanders to aid him in maintaining the peace and good order at the polls".

Section 8160 of the Compiled General Laws of 1927 reads as follows, to-wit:

"Any person when summoned or called upon by the Sheriff or Deputy Sheriff, who shall fail or refuse to assist him in maintaining the peace and good order at the polls, shall be fined in a sum not to exceed two hundred and fifty dollars or be imprisoned not to exceed six months".

It appears from the provisions of the two Sections quoted above, that the law does not contemplate the deputization of more than one person for each election district, and certainly not more than one would be entitled to compensation. However, if the Sheriff should deputize several persons and such persons were appointed and qualified as regular Deputy Sheriffs are, I do not know of any reason why a Deputy Sheriff could not assist in enforcing the law at any time and at any place in the county he might happen to be on the day of the election.

April 23, 1936.

ELECTIONS—FILING FEE OF CANDIDATES—AMOUNT

Dear Sir:

Replying to your favor of April 20th., permit me to say a candidate would be required to pay his filing fee and committee Assessment based on the net income of a fee office as shown by the records to have been paid for the year preceding the year in which the candidate qualifies to run for office. In other words, if the gross receipts of the

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office are \$3,000.00 and the expense of the office is \$600.00, and the net amount of compensation received by the officer is \$2,400.00, then the qualification fee should be based upon a compensation of \$2,400.00.

April 21, 1936.

ELECTIONS—QUALIFICATION OF CANDIDATES IN COUNTY

Dear Sir:

Replying to your favor of April 20th., relative to whether or not a candidate for nomination to a non-elective office where the candidate is to be voted for wholly within a single county should qualify with the Secretary of State or the Clerk of the Circuit Court where the office is placed in the Primary by Resolution of a political party, and when the nomination is for appointment to a State office, permit me to say:

When the State Executive Committee of a political party by Resolution places a non-elective office in the Primary, we think that those who desire to qualify as candidates for nomination should be guided in qualifying as a candidate for nomination by the same law which prescribes the manner in which candidates for elective offices are guided.

Section 5 of Chapter 13761, Laws of Florida, Acts of 1929, prescribes the procedure for qualification by candidates who are to be voted for wholly within a single County. The Section reads as follows, to-wit:

"Each candidate for nomination for an office to be voted for wholly within a single county shall file his sworn statement and receipt for Committee assessment, if any has been leyied, with, and pay his filing fee as herein required, to the Clerk of the Circuit Court of said county, who shall receive the same in his capacity as Clerk of the Board of County Commissioners of said county, not less than 25 days previous to the day of the Primary Election".

The Judge of the Circuit Court in and for Duval County under the Resolution of the Democratic Executive Committee is subject to nomination in the Primary Election to be held this year. The office is one to be voted for wholly within Duval County. The office of Circuit Judge is a State office, and while we realize and admit that the question of whether or not a candidate for said office should qualify with the Secretary of State or the Clerk of the Circuit Court is debatable, we are convinced that the weight of legal authority favors qualification by such candidate with the Clerk of the Court as prescribed by Section 5 of Chapter 13761, Acts of 1929. The Secretary of State concurs in this view of the matter, and, therefore, this office holds that a candidate for nomination to an office where the candidate's

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nomination is to be voted for wholly within a single county, should qualify with the Clerk of the Circuit Court of said county, as provided by Section 5 of Chapter 13761, Acts of 1929.

April 22, 1936.

ELECTIONS—REGISTRATION—SPECIAL ACTS

Dear Sir:

Replying to your favor of April 20th. in which you refer to Chapter 17222 Acts of 1935, Laws of Florida, which provides that the Registration books may be kept open until not later than 30 days before any Primary or General Election in the year 1936 and subsequent years in counties having a population of not less than 18,500 and not more than 18,800 according to the last preceding Federal Census, permit me to say:

Section 20 of Article III of the Constitution provides that the Legislature shall not pass Special or local laws

"for opening and conducting elections for State and County officers".

It appears from the provision quoted above that the organic law contemplates only general laws uniform throughout the State for elections to be held for the election of State and county officers, and it might be said that the registration of electors is only incidental to the "*opening and conducting of elections for State and County officers*", and, therefore, does not fall within the inhibitory provision of the organic law. However this may be, as a matter of public policy, if for no other reason, all laws pertaining to Primaries and General Elections for the nomination and election of State and County Officers should be uniform in operation throughout the State.

The statute in question is contrary to the General Law providing for the opening and closing of the Registration books prior to Primary Elections and General Elections held for nomination and election of State and County officers. However, an administrative officer is not authorized to declare an Act of the Legislature invalid, therefore, this office is not in position to say that the Registration books in counties of population designated in Chapter 17222, Laws of Florida, Acts of 1935, can not remain open until thirty days prior to the day of Election, which in this instance would require the books to close in the counties of the designated population on May 2nd. prior to the Primary to be held June 2nd. 1936.

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April 6, 1936.

ELECTIONS—VOTERS—ELIGIBILITY—OATH OF REGISTRANT

Dear Sir:

Replying to your favor of April 2nd., permit me to say that in order to be eligible to vote in a Primary Election in this State, a person must have been a resident of the State for one year, and of a particular county for six months. However, Section 369 of the Compiled General Laws provides that a person who will *complete a legal residence in the county*, or becomes 21 years of age between the closing of the registration books and the Primary Election, may, by appearing before the Supervisor of Registration and making affidavit, be permitted to register as an elector to vote in the Primary Election.

Replying to your second question, permit me to say, Section 257 of the Compiled General Laws, provides that upon application for registration to vote in the General Election, each elector shall be required to swear or affirm among other things that he is 21 years of age, etc.

April 6, 1936.

ELECTIONS—CANDIDATES—QUALIFICATION FEE

Dear Sir:

Replying to yours of April 3rd., permit me to say that where the salary of an office is definitely fixed by law, a candidate for the office should pay qualification fee based on salary named in the statute.

April 8, 1936.

ELECTIONS—ABSENTEE BALLOTS

Dear Sir:

Replying to yours of April 6th., permit me to say:

Section 2 of Chapter 16986, Laws of Florida, Acts of 1935, reads as follows, to-wit:

Section 2. "That it shall be the duty of the County Judge * * * to receive and handle all Absentee Voter's Ballots received by him until midnight of said election day. Ballots received by such County Judge after midnight of such election day shall be voided, and such ballots destroyed by Canvassing Board of the county in which received".

Section 1 of the Act provides that such ballots, (Ballots received under provisions of Chapter 16986) shall be handled by the County

Judge as provided under the provisions of Section 2 of Chapter 11824, Acts of 1927.

The Act of 1927 provides that the Absentee Ballots must be placed in the ballot boxes prior to delivery of said ballot boxes to the precincts.

You state that delivery of ballot boxes in the larger counties begins anywhere from two to three days prior to election day, and that under this system it will be impossible to place Absentee Ballots received by the County Judge after the ballot boxes have been sent to the precincts therein.

In view of the conflicting provisions regarding the procedure to be followed between Chapter 11824, Acts of 1927, and Chapter 16986, Acts of 1935, it seems to me that a practical construction of the law is necessary and proper to the end that the procedure prescribed by the Statutes may as nearly as possible be followed by the election officers, and with that thought and purpose in mind, I will suggest the following procedure.

First.—That arrangements be made to have the ballot boxes delivered to the precincts at a time as close to the day of election as possible.

Second.—That all Absentee ballots in the hands of the County Judge on the day that the ballot boxes are to be delivered to the precinct Custodian be placed therein as provided by Chapter 11824, Acts of 1927.

Third.—That all Absentee ballots received by the County Judge from *outside* the State after the ballot boxes have been delivered to the precincts, and up until midnight of the day of the election, be retained by him for delivery to the Canvassing Board to be handled in the same manner that Section 432 of the Compiled General Laws of 1927 provides for the handling of Absentee voters ballots cast by electors who vote in a county other than the county of their residence.

I believe the procedure suggested would meet Judicial approval, provided, no fraud is committed.

April 7, 1936.

ELECTIONS—CANDIDATE HOLDING POSITION OF POSTMASTER

Dear Sir:

Replying to yours of April 6th., permit me to say. Article 16, Section 15 of the Constitution of the State of Florida reads as follows, to-wit:

"No person holding or exercising the functions of any office * * * * * under the Government of the United States

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* * * shall hold any office of honor or profit under the Government of this State".

In view of the constitutional provision quoted above, I do not think it would be advisable for you to become a candidate for County Commissioner while you are Postmaster. The constitutional provision quoted refers to holding or performing the functions of two offices. It does not refer to a person becoming a candidate for nomination to an office under the State Government while holding an office under the Federal Government, and it is up to you to decide whether or not you are willing to jeopardize your chance of holding the position of Postmaster by participating as a candidate for an office under the Government of this State.

March 30, 1936.

ELECTIONS—VOTER—POLL TAX

Dear Sir:

Replying to yours of March 26th., permit me to say that under the provisions of paragraph 6 of Section 248 it appears that a person who has not been in this State more than one year should be required to pay poll tax for the year next preceding the year in which the election is held, and that if such person produces a poll tax receipt from the State from which he or she moved, that it is not necessary to pay poll tax for the two years next preceding the year in which an election is held.

A person who has moved to this State from a State where payment of poll tax is not required could not produce a poll tax receipt from the State from which he or she removed and, therefore, under the law is required to pay poll tax for the two years next preceding the year in which the election is to be held in this State.

April 2, 1936.

ELECTIONS—REGISTRATION OF NEGROES TO VOTE IN
REPUBLICAN PRIMARY

Dear Sir:

Replying to your favor of April 1st., permit me to say that a negro may register to vote in a Republican Party Primary, provided the Republican Party in this State has not by Resolution excluded them from participation in the Republican Primary.

At this time the Secretary of State has not received a Resolution adopted by the Executive Committee of the Republican Party excluding

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negroes, therefore, if a negro applies for registration to vote in the Republican Primary there is nothing you can do except to register him, but under no circumstances can a negro register to vote in the Democratic Primary Election.

April 20, 1936.

ELECTIONS—VOTERS—REGISTRATION—PAYMENT OF POLL
TAXES—SOLDIERS AND SAILORS

Dear Sir:

In reply to yours of April 16th., permit me to say, the last day for the payment of poll taxes prior to the Primary to be held is the third Saturday preceding the day of the election, which this year falls on May 16th. See Section 16 of Chapter 13761, Acts of 1929.

Replying to your second question, permit me to say: No change in the registration books can be made between the first and second Primary Elections. In other words, a person who will not be 21 years of age on or before June 2nd. this year can not be registered to vote in either the first or second Primary Election.

Replying to your third question, permit me to say, the statute requires the payment of poll taxes for the two years next preceding the years in which an election is to be held, as a prerequisite to the right to vote, if the person is, under the law required to pay poll taxes.

A person who was 21 years of age prior to January first 1934 should pay poll taxes for the years 1934 and 1935, if the same person became 21 years of age after January first 1934, and prior to January first 1935, such person should be required to pay poll tax for 1935 only. If the same person became 21 years of age after January first 1935, such person would not be required to pay poll tax for either 1934 or 1935.

If a person attained the age of 55 prior to January first 1934, such person should not be required to pay a poll tax for 1934 or 1935, but if the person became 55 years of age after January first 1934 he should pay poll tax for 1934, but if the person became 55 years of age prior to January first 1935, such person would be exempt from payment of poll tax for the year 1935.

Replying to your fourth question, permit me to say soldiers and sailors are not exempt from payment of poll tax, unless they were disabled while actually serving in a war.

Replying to your fifth question, permit me to say, a person who is unable to sign his or her name should be allowed to register if they are otherwise qualified.

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April 6, 1936.

ELECTIONS—VOTERS—RESIDENCE

Dear Sir:

Replying to yours of April 3rd., permit me to say that a person who maintains his permanent place of residence in the State of Florida, and in a particular county, is eligible to qualify to vote in this State, even though he may be *temporarily residing in another State* because his employment or business requires him to be absent from his home. However, this should not be construed to mean that a person who has moved to another State with the intention of definitely abandoning this State as his permanent place of residence, should be allowed to qualify to vote in the State of Florida.

April 20, 1936.

ELECTIONS—VOTERS—REGISTRATION IN COUNTY AND
PRECINCT OF RESIDENCE*Dear Sir:*

Replying to your favor of April 18th., permit me to say that a person should be registered in the precinct registration book of a precinct in which he has his permanent place of residence. If an elector maintains a place of residence in Union County, he should register in that county, and a person who resides in Bradford County should register in that county.

April 3, 1936.

ELECTIONS—CANDIDATES—QUALIFICATION IN COUNTY

Dear Sir:

Replying to yours of April 2nd., permit me to say that Section 5 of Chapter 13761, Acts of 1929, reads as follows, to-wit:

"Each candidate for nomination for an office to be voted for wholly within a single county shall file his sworn statement and receipt for Committee Assessment, if any has been levied, with, and pay his filing fee as herein required, to the Clerk of the Circuit Court of said county, who shall receive the same in his capacity as Clerk of the Board of County Commissioners of said county, not less than twenty-five days previous to the day of the Primary Election".

If yours is an office to be voted for wholly within Duval County, it seems to me that you should qualify with the Clerk of the Court as

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provided by the Section quoted above. The section quoted has not been amended or repealed.

April 6, 1936.

ELECTIONS—POLL TAXES—EXEMPTION—LOSS OF LIMB—
DISABLED WAR VETERANS

Dear Sir:

Replying to your favor of April 4th., permit me to say that a person who has lost a limb, whether in war or not, is entitled to exemption from payment of poll tax.

A person who has lost a limb or become otherwise permanently disabled while actually serving in the Army or Navy, is entitled to exemption from payment of poll tax.

A person who served in the Army or Navy who has lost a limb since the war, is entitled to exemption. This applies to all persons. Any disability, *other* than loss of a limb, does not apply to persons who did not serve in the war, and a Veteran is not entitled to exemption unless his disability otherwise than by loss of a limb accrued while actually serving in the war.

April 18, 1936.

ELECTIONS—NATURALIZED PERSONS—REGISTRATION IN
COUNTY AND PRECINCT OF RESIDENCE

Dear Sir:

Replying to yours of April 16th., permit me to say, that under the law a person is required to register to vote in *the precinct* in the *county* of his permanent residence.

A naturalized citizen is required to produce to the registration officer his certificate of naturalization or duly certified copy thereof, and make oath that he is the identical person named in such certificate before he should be allowed to register. See Section 248 of the Compiled General Laws of 1927.

A person who does not have a permanent place of residence, that is, a precinct in some county of this State wherein he has established a voting residence should not be allowed to qualify to vote.

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June 25, 1936.

ELECTIONS—CANDIDATES—CONTRIBUTIONS TO OTHER
CANDIDATES PROHIBITED IN PRIMARIES, BUT NOT
IN GENERAL ELECTIONS*Dear Sir:*

Replying to your favor of June 24th. with enclosure, permit me to say, the only statute we have found pertaining to the subject of your inquiry is Section 8193 of the Compiled General Laws of 1927, which reads as follows, to-wit:

"No candidate for nomination in a primary election shall, directly or indirectly, himself, or by or through another persons, give, pay, expend or contribute any money or other thing of value for the furtherance of the candidacy of any other candidate.

Any person violating the provisions of this Section shall be punished as provided in Section 8182".

You will observe that the statute has reference to candidates for nomination in a primary election and not to a candidate who has been nominated in a primary election and who thus becomes a candidate for election in the General Election. You will observe the statute applies only to candidates for nomination in the primary election and, therefore, there is no prohibition against a person who has already been nominated making a contribution to the campaign fund of another person who is a candidate for election.

July 2, 1936.

ELECTIONS—VOTING MACHINES

Dear Sir:

Under date of April 27th. 1932 in reply to an inquiry on the question of whether or not the statutes authorizing use of voting machines conflicted with the Primary Election laws, the Attorney General said:

"Replying to your favor of the 21st. instant relative to use of voting machines in Primary and General Elections, permit me to say, it is my opinion that the statute providing for the use of such machines in Primary Elections does conflict with the Primary Election law to such an extent that it would be necessary before voting machines could be used, to enact almost entirely a new Primary Election law.

You request me to advise in what manner the Act providing for voting machines conflicts with the Primary Election laws, permit me to say that it conflicts in so many particulars that it would require quite a long letter to particularly state the several conflicting provisions,

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however, I might mention the fact that the Primary Election laws provide for the printing of the ballots for any political party required to hold a Primary Election; provides for the manner in which the names of the candidates shall be printed thereon; provides the manner in which the election inspectors shall handle and dispose of ballots, and also provides for ballot boxes and receiving and returning of said ballot boxes to the Supervisor of Registration, as well as enumerable other things which you may ascertain by reference to the Primary Election laws".

You will observe that this office did not hold the statutes providing for voting machines to be invalid, but did hold that the statutes providing for voting machines does conflict with the Primary Election law.

The General Law providing for voting machines is Chapter 13893, Acts of 1929. We observe that there are four other Acts providing that voting machines may be adopted in certain counties.

Section 20 of Article 3 of the Constitution of the State of Florida provides that:

"The Legislature shall not pass Special or local laws for opening and conducting elections for State and county officers, and for designating the places of voting".

It seems to me that there is considerable conflict between the *General* laws governing Primary and General Elections and the "voting machine Acts of 1929", and for that reason and for the reason that the Constitutional provision quoted above, which appears to contemplate uniformity throughout the State of election laws, that there might be some question regarding the validity of Chapter 13893, Acts of 1929; however, we feel disposed to say that these are questions which should be determined by the Supreme Court, and we desire to emphasize the fact that this office has not declared Chapter 13893, or the other Acts authorizing certain counties to adopt voting machines to be invalid, but that this office did say that the Acts were in conflict with the General Primary Election laws.

July 1, 1936.

ELECTIONS—ADDITIONAL INSPECTORS

Dear Sir:

Replying to your favor of June 26th., in which you ask to be advised whether or not the County Commissioners of a county could legally appoint one set of election inspectors to be in charge of the polling place during the hours the polls are open, and a different set of election inspectors to count and tally the votes after the polls had

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closed, permit me to say, a study of the several sections of the election laws as they appear in the Compiled General Laws of 1927, leads me to the conclusion that under the law as it is now written, such procedure would not be legal or proper. All the statutes on the subject appear to require the same inspectors who serve during the time the votes are being cast to count and tally the votes after the polls have closed.

The following opinion on this subject was written by former Attorney General Fred H. Davis.

"I beg to advise that I have carefully considered the question of whether or not it would be legal for Boards of County Commissioners to appoint additional inspectors to serve in those precincts where the voting population is so large that the three (3) inspectors provided by Section 249 Revised General Statutes, as amended by Chapter 8587, Acts of 1921, cannot properly handle the number of voters who are entitled to vote.

The statute in question says that the Board of County Commissioners shall appoint three (3) inspectors but does not, except by implication, say that additional inspectors may not be appointed. It seems to me that the proper construction of the election law should be predicated upon a consideration of the object of the election law regulation, which is to insure each qualified voter the right to exercise his franchise under circumstances which will insure a fair and impartial election, counting, canvass of the votes and declaration of result.

The case of Pickett-vs-Russell, decided by the Supreme Court of Florida and reported in 42nd Florida Report page 118, holds that an election cannot be declared void where persons act as inspectors of election and are recognized by electors as election officers and make returns of the election as such, which returns are duly canvassed.

The holding of the Supreme Court is based upon the fact that such inspectors of election are de facto, if not de jure officers, and therefore, their acts done under color of office should be respected and observed in the absence of any fraud.

It appears that in one precinct in this state there are 1,785 voters. Considering the time during which the polls are allowed to be open by law it will require that three (3) voters per minute be handled by the inspectors, which is an utter impossibility. Furthermore, the law allows five (5) minutes for each voter to fill out his ballot. See Section 274, Revised General Statutes.

It can readily be seen that if a voter is allowed his full legal rights that it will be impossible for such a large number of voters to vote in one election day, which lasts from 8 o'clock in the morning until 7:25 at night, (sundown).

Accordingly, I am of the opinion that in the absence of an express prohibition in the law against so doing wherever the Board of County

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Commissioners of any county finds that by reason of an excessively large number of voters in a particular precinct that it will be impractical for the three (3) regular inspectors provided for by law to handle the number of voters who are authorized to vote, it will be perfectly legal and proper for such county commissioners to pass a special resolution, reciting the fact that they find and determine by reason of such an excessive number of voters that it is necessary for the proper conduct of the election that additional inspectors of election be appointed for such precinct.

Such resolution, when adopted, should be published and notice of the additional inspectors so appointed should be published in a newspaper in like manner as provided for by section 249, Revised General Statutes. Such inspectors should be sworn in on election day as all other inspectors are sworn in and the oath as inspector, which is taken and signed by them should be returned with other election papers and filed as part of the election returns.

I am convinced that the courts will uphold this action on the theory that the primary purpose of the election law is to insure each voter of his right to vote as well as a proper and fair conduct of the election, and that unless fraud is committed by some persons so appointed and acting as additional inspectors the conduct and holding of the election will not be adversely affected by the fact that more than three (3) inspectors provided for by statute are appointed and serve."

July 10, 1936.

**ELECTIONS—REQUISITES FOR NAMES TO BE PRINTED ON
GENERAL ELECTION BALLOTS**

Dear Sir:

Replying to your favor of July 8th, permit me to say:

Chapter 14657, Laws of Florida, Acts of 1931, provides that the Board of County Commissioners of each county shall cause to be printed on the ballots to be used in their respective counties, only the names of the candidates who have been put in nomination by primary election, or the appropriate executive committee, of any political party in this state.

In the case of *State ex rel Mitchell*, 118 Fla. 513, 159 So. 775, it was said:

"The limitation is clear where the statutory primary procedure was capable of being followed in the selection of the certified names as nominees of a party subject to the primary laws, but which party ignored such primary laws as a nominating medium."

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This means that where a political party such as the Republican party had an opportunity to nominate their candidates in a primary election, but failed so to do, that there is no way in which the names of their candidates can be printed on the General Election ballot.

Therefore, before the Republican party candidate would be eligible to be printed on the General election ballot, it would be necessary for such party to hold a primary election.

July 14, 1936.

ELECTIONS—BALLOT BOXES

Dear Sir:

Replying to your favor of July 7th., in which you state that Suwannee County has three sets of ballot boxes. That two sets of said boxes are full of Primary Election ballots, and that if we hold two Primary Elections for United States Senators, also the General Election that you should have five sets of ballot boxes.

You ask to be advised whether or not under the law any of the Primary Election boxes may be emptied of the Primary Election ballots. In reply to this question, permit me to say, the law provides that the ballot boxes used in the Primary Elections must remained locked and sealed until after the next ensuing General Election.

The reason for the delay in answering your letter is based upon the fact that the question of whether or not the expense of a Special Primary Election for the nomination of United States Senators may be paid from the State or County Treasury is now pending in the Supreme Court in a case recently filed to test the question. If the Court should hold that the expense of the Special Primary Election cannot be paid from the State or county funds, and a Special Primary Election should be held by the party under the inherent powers of the party to hold Primary Elections, then it might be necessary for the expense of providing additional ballot boxes would have to be borne by funds procured by the Committees of the political parties.

As the matter now stands, I think it would be advisable to take no action regarding the procurement of additional ballot boxes until the Supreme Court has decided the case now pending.

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July 13, 1936.

ELECTIONS—SPECIAL QUALIFICATION FOR U. S. SENATE

Dear Sir:

I am in receipt of yours of July 7th, which reads as follows:

"As you know the State Democratic Executive Committee on June 30th, 1936, adopted resolution reciting the fact that vacancies existed in the offices of United States Senators of Florida, and that the Committee under the authority of its inherent powers adopted a resolution calling for a special primary to be held on August 11th and if necessary, a second special primary on September 1, 1936.

The Committee sent me for filing in this office certified copy of the said resolution. I enclose you a copy herewith for your information.

I have now had tendered to me a duly executed qualification oath as a candidate for United States Senator accompanied by the sum of three hundred dollars (\$300.00) in legal tender, with a request that I file the same as the qualification oath and fee of said candidate in the said primaries.

As the legal adviser of this office under the Constitution, will you kindly advise me whether the same should be officially accepted and filed?"

In reply to your request for advice on the question of whether or not you should accept, as Secretary of States, the qualification oath and fee of a candidate for United States Senator, as a candidate for nomination in special primary elections called by the State Democratic Executive Committee, under its purported inherent powers, to be held on August 11th and on September 1st, 1936, permit me to say that in view of the unsettled conditions of the law governing the subject, and so that a predicate for a clear and definite interpretation and construction of the law on the subject may be obtained from the Supreme Court of Florida, I respectfully advise that you, as Secretary of State, decline to accept the qualification oath and fees which have been tendered you by the candidates for nomination in the special primary elections which has heretofore been called by the State Democratic Executive Committee.

What I have said above relates to statutory primaries only, and if it develops that the primaries as called can not be held as statutory primaries, then my further opinion is that all political parties have the inherent right to nominate by party primary party candidates to be voted for at the forthcoming General Election for two United States Senators, and that the call of the Democratic party through its Executive Commit-

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tee, issued June 30th, 1936, and the method and time named for candidates to qualify, are effective and valid as steps toward a party primary, and the party may proceed to carry out the said primaries on the dates set by its Executive Committee as among the candidates who have qualified.

March 28th., 1936.

ELECTIONS—REGISTRATION—DEFINITE AGE MUST BE GIVEN

Dear Sir:

Replying to your favor of March 26th., permit me to say that where an applicant for registration as an elector states his or her age to be "21 plus," the applicant should be advised that the law requires them to state their age definitely.

A person can give their age as 21 years or 24 years, or any other age but whatever answer they give as to their age should be definite. And where the applicant refuses to give his or her age definitely, I think the registration officer is authorized to exercise his discretion.

March 23rd, 1936.

**ELECTIONS—CANDIDATES SHOULD QUALIFY UNDER SAME
NAME AS REGISTERED**

Dear Sir:

Replying to your favor of March 20th., in which you state that a married lady in your county desires to qualify as a candidate for public office as Mrs. John W. Smith, and that you think she should qualify as Elizabeth J. Smith, permit me to say, that I think in view of the provisions of Section 417 of the Compiled General Laws that a candidate for office should qualify in the same name that such person is registered under. In other words, the person should not register as Elizabeth J. Smith and then qualify as a candidate under the name of Mrs. John W. Smith, or vice versa. Section 417 of the Compiled General Laws, which pertains to Primary Elections reads as follows, to-wit:

"No registered voter shall call himself or pass by any other name than the name by which he is registered. Nothing in this Section shall prevent the alteration of names by the Circuit Court, as provided by law, and when the name of anyone is changed by the order of said Court he shall notify the Supervisor of Registration of the fact that his name has been changed. Anyone violating this Section shall be punished by imprisonment in the State prison not exceeding five years." (Chapter 6469, Acts of 1913, Section 57. See Also Section 8177, C. G. L. of 1927.)

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March 24th., 1936.

ELECTIONS—ABSENTEE REGISTRATION

Dear Sir:

Replying to your favor of March 16th., in which you ask to be advised whether or not under the provisions of Chapter 16987, Acts of 1935, a person within the State of Florida, but who is not in the County of his permanent residence, may register by mail, permit me to say.

The title to the Act provides for the registration of qualified electors *from without the State*, and does not refer to registration of electors from *without the County*.

Section 1 of the Act appears to authorize qualified electors to register *from without the County*.

You will observe that there is a discrepancy between the title to the Act and the provisions of Section 1 thereof, however, the subject of the title to the Act is *Registration of Electors*, and inasmuch as the title to an Act is not required to be an Index to the provisions contained in the body of the Act, and inasmuch as the Attorney General is not authorized to declare a provision of an Act of the Legislature invalid because of what appears to be a discrepancy between the provisions contained in body of the Act and the title thereof, I think that the Registration officer may permit a person who is in the State but who is temporarily out of the count of his permanent residence to register under the provisions of Section 1 of Chapter 16987, Acts of 1935.

Replying to your second question permit me to say that I am enclosing herewith copy of a letter under date of January 18th, 1936, which was written to _____ in which you will find the answer to your second question.

March 12, 1936.

ELECTIONS—POLL TAXES—EXEMPTIONS

Dear Sir:

Replying to your favor of March 11th in which you make inquiry regarding poll tax exemption accorded to war veterans under the law, permit me to say that the exemption from payment of poll tax by War Veterans and members of the National Guard is covered by Sections 248, 910 and 2070 of the Compiled General Laws of 1927.

A War Veteran who has lost a limb, or any person who has reached the age of 55 years, is entitled to the exemption from payment of poll tax, regardless of whether or not he was injured in the War. If a War Vet-

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eran was actually disabled in the War while in the Army or Navy service, he is entitled to exemption from payment of poll tax. See Section 910 of the Compiled General Laws.

See page 356, Attorney General's Biennial Report for 1933-34.

March 26th., 1936.

ELECTIONS—REGISTRATION—AGE REQUIRED

Dear Sir:

Replying to your favor of March 23rd., permit me to say:

A person who will not be twenty-one years of age until November 2nd. 1936, will not be eligible to register to vote in the Primary Elections to be held this year. Such person would not be eligible to register for the General Election to be held November 3rd. this year because Section 257 of the Compiled General Laws of 1927 provides that:

"Upon application for registration each elector, (applicant for registration) shall swear that he or she is twenty-one years of age."

A person who will not be 21 years of age until November 2nd. could not at the time of registration swear that he or she is 21 years of age because the time for registration expires prior to November 2nd. 1936.

March 7, 1936.

ELECTIONS—REGISTRATION—C. C. C. CAMP MEMBERS FROM
OTHER STATES

Dear Sir:

Replying to your favor of March 4th., in which you state that there are now in the Civilian Conservation Corps camps located at Welaka about 200 men who may be moved before the next election, and in which you ask to be advised whether or not your district registration officer should register these men if they subscribe to the oath provided for by law, permit me to say:

A person who has been a resident of the State of Florida for one year, and of a county for six months is entitled to register as an elector in this State, provided such person really considers this State his permanent place of residence. It is generally understood, I think, that the great majority of men in the C. C. C. camps do not in fact consider the State of Florida their permanent state of residence, and for that reason I do not think that these men should be encouraged to qualify as electors

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in this State. However, where one of them makes application to register and subscribes to the required oath, I do not know of any authority that you would have to deny him the privilege of registering.

January 29, 1936.

ELECTIONS—ELECTORS—RESIDENCE—MARRIED WOMEN

Dear Sir:

Replying to your favor of January 28th, permit me to say that if a male citizen of Florida temporarily residing in Washington has been married to a resident of Washington or some other State for a period of one year, I think the wife's legal residence could be held to be that of her husband for the purpose of registration as an elector of this State under the provisions of Chapter 16987, Laws of Florida, Acts of 1935.

Where a woman resident of the State of Florida married a resident of Washington or some other State, I think her place of residence should be held to be that of her husband. In other words, I do not think that a wife should claim one State to be her place of residence while her husband claims another State as his place of residence.

A wife is presumed to reside with her husband and her place of residence should be held to be in the same State that her husband claims as his place of residence.

January 28th., 1936.

ELECTIONS—ELECTORS—POLL TAX PAYMENTS—WHEN SUPERVISOR OF REGISTRATION NOT TO ISSUE CERTIFICATE OF EXEMPTION

Dear Sir:

Replying to your favor of January 22nd., in which you state that Mr. _____, Supervisor of Registration of Volusia County has informed you that the non-resident poll tax exemption certificates can not be issued hereafter, permit me to say Paragraph 6 of Section 248 of the Compiled General Laws of 1927 contains the following provision, to-wit:

"Provided that no person who has not been in this State one year previous to any General Election, shall be required to pay more than one year's poll tax; provided, that no person who has only been a resident of this State one year must first produce a poll tax receipt from the State from which they moved from before being permitted to vote."

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It will be seen from the provisions quoted above that for a person who has been in this State only one year to be eligible to vote must first produce a poll tax receipt from the State from which the person moved. In view of this provision we think that where a person who comes within the terms of the provision is unable to produce a poll tax receipt from the State from which they moved that it would be necessary for such person to pay poll taxes for the two years next preceding the year in which the election is to be held.

The statute does not authorize the Supervisor of Registration to issue a poll tax exemption certificate to persons who have resided in the State only one year preceding the election.

January 18, 1936.

ELECTIONS—SUPERVISOR OF REGISTRATION—WHAT LISTS OF REGISTRANTS SHALL CONTAIN

Dear Sir:

Replying to your favor of January 16th., in which you state that you are compiling a list of the registered voters at the request of the County Commissioners, and that you are providing information on the list giving the name, sex, age, occupation, color and address, and that you would like to compile the list giving the information stated above for the year 1936.

Section 379 of the Compiled General Laws provides that:

"The Supervisor of Registration shall furnish copy of the name, occupation and residence of any electors upon payment to him of reasonable compensation therefor, not exceeding the customary fees for copying, papers in the office of the Clerk of the Circuit Court, but shall not furnish in writing any other information contained in said registration books."

As you state, it is generally understood that the provision quoted above was for the protection of the Supervisor of Registration, however, in providing that protection, the Legislature employed mandatory language when it said that the Supervisor of Registration *shall not furnish in writing any other information contained in the registration books.* Therefore, if the Supervisor of Registration should furnish information in writing other than the name, occupation and residence of electors he would be doing that which is expressly prohibited by the statute and, therefore, I can not advise you that you can legally provide in writing information taken from the registration books in addition to the information expressly allowed by the provisions of the statute.

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January 18, 1936.

ELECTIONS—PRIMARY—TIME FOR PAYMENT OF POLL TAXES

Dear Sir:

Replying to your favor of January 16th., relative to the time for payment of poll taxes preceding the Primary Election, permit me to say, Section 16 of Chapter 13761, Acts of 1929, provides as follows:

SECTION 16.

"That no person unless exempt under the provisions of law relating to General Elections, shall be permitted to vote at a Primary Election, who shall have failed to pay on or before the third Saturday preceding the date of the first Primary Election as herein provided for, his poll taxes for the two years next preceding the year in which such Primary Election shall be held, nor shall any person be permitted to vote at any such election whose name does not appear on the registration books as required by law."

The Section quoted above supersedes all prior statutory provisions relative to the time for the payment of poll taxes preceding a Primary Election.

I am enclosing herewith a mimeograph compilation by the Secretary of State showing the time for registration and payment of poll taxes.

August 23, 1935.

ELECTIONS—CAMPAIGN EXPENSE STATEMENTS—WHETHER
REQUIRED BY CANDIDATES FOR PARTY COMMITTEEMEN

Dear Sir:

Replying to your favor of August 21st., permit me to say Sections 8182 and 8183 refer to candidates for *nomination* in a Primary Election, whereas the law provides for the *election* of political party Committeemen in the Primary Election, and it was because of these provisions that former Attorney General Davis, now a member of the Supreme Court and who was my predecessor in office, ruled that it was not necessary for candidates for Party Committeemen to file expense statements as candidates for nomination, as party candidates for State and County office are required to do.

We have not felt disposed to disturb the ruling referred to above for the reasons,—first: That political Party Committeemen are *elected in the Primary instead of being nominated*, and second: for the reason that heretofore it has been the general impression that a candidate for Party Committeeman would not expend more than the statute allows for

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an office in a political party to which no salary or other compensation attaches. See page 559 of the Attorney General's Report for 1931-1932. I think you will find the bound volume in the office of the Clerk of the Circuit Court.

August 5, 1935.

**PRIMARY ELECTIONS—PAYMENT OF POLL TAX CANNOT BE
WAIVED BY COUNTY DEMOCRATIC EXECUTIVE
COMMITTEE**

Dear Sir:

I am in receipt of your letter of the 20th ultimo, making inquiry if the County Democratic Executive Committee is authorized to waive the payment of poll taxes for Primary Elections.

In reply your attention is called to Section 371 (1), Compiled General Laws of Florida, 1934 Supplement, which reads as follows:

"No person, unless exempt under the provisions of law relating to general elections, shall be permitted to vote at a primary election, who shall have failed to pay on or before the third Saturday preceding the day of the first primary election, as herein provided for, his poll taxes for the two years next preceding the year in which such primary elections shall be held, nor shall any person be permitted to vote at any such election whose name does not appear on the registration books as required by law."

In reply I beg to say that I have found no statute authorizing County Democratic Executive Committees to waive the payment of poll taxes for Primary Elections, and in view of the above quoted statute requiring the payment of poll taxes for such elections, it is my opinion that County Democratic Executive Committees are not authorized to waive such payment.

September 8, 1936.

**ELECTIONS—PLACING NAMES ON GENERAL ELECTION BALLOT
WHEN VACANCY BY DEATH OCCURS IN PRIMARY
NOMINEES**

Dear Sir:

This refers to your communication of September 4, 1936, from which it appears that one _____ incumbent constable of a Justice of the Peace District of a Florida county, was a candidate for and secured, the Democratic nomination to succeed himself. Subsequent to the primaries he died. You ask what procedure is necessary to secure the printing, on

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the general election ballot in November, of the name of a nominee of the Democratic party.

You will note that the death of _____ created a vacancy in office as to the remainder of the unexpired term; but that as to this term, no vacancy in nomination was created, since there had been no original nomination, at the primary, of a candidate for such unexpired term. You will further note that there is also a vacancy in nomination as to the new term beginning in January of 1937. As to the remaining portion of the unexpired term, there is no way, short of a primary, by which the Democratic party could secure the printing of the name of its nominee on the general election ballot. This follows because, under our law, nomination must be by primary, except in cases in which a vacancy in nomination occurs. As has been pointed out, there is, as to the remainder of the unexpired term, no vacancy in nomination.

As to the term beginning in January of 1937, a vacancy in nomination does exist, because the nominee of the Democratic party has died since the primary and before the general election. Under such circumstances, the appropriate Executive Committee of the Democratic party would be authorized to file its certificate containing the nominee of such committee, and the office for which nominated. This certificate is required to be signed and sworn to by the Chairman and Secretary of said Committee, which, in this particular instance, would be the County Democratic Executive Committee. If such certificate is filed with the Board of County Commissioners of the county in question not more than sixty days, nor less than twenty days, prior to the date of the general election in November, such Board of County Commissioners would be required to cause to be printed on the ballots to be used in the county in question, the name of such candidate for the term to begin in January of 1937.

February 27, 1936.

ELECTIONS—AMOUNT OF FILING FEE OF CANDIDATE

Dear Sir:

In your letter of the 25th instant you state that the Legislature of 1933 passed two acts fixing the salary of the County Solicitor for Escambia County, one at \$5500 a year, and another at \$3600, the latter to take effect upon the expiration of the term of the present incumbent of said office. You thereupon request my opinion as to which one of these Acts determines the amount of filing fee to be paid by you as a candidate in the June Primary for nomination to the office of County Solicitor of Escambia County.

Section 385 of the Compiled General Laws of Florida fixes the amount of the filing fee at 3% of the annual salary or compensation of the office

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sought by the candidate. The salary of the office sought by you as a candidate for nomination of County Solicitor of Escambia County, if Chapter 15992, Acts of 1933, becomes effective as provided by Section 4 thereof, will be \$3600 per annum.

Therefore, assuming Chapter 15992 to be a valid act effective as therein provided, your filing fee under Section 385, Compiled General Laws, should be 3% of \$3600, and your party assessment as provided by Section 381, Compiled General Laws, should be computed also on Chapter 15992.

August 6, 1936.

ELECTIONS—REFUND OF QUALIFICATION FEE

Dear Sir:

I am in receipt of your letter of the 5th inst., enclosing copy of letter addressed to you by Honorable R. A. Gray, Secretary of State, under date of August 3, 1936, which presents the question of his authority to refund to Honorable _____ of Miami the \$300.00 he paid as qualification fee as a candidate for the office of United States Senator in the Special Senatorial Primary Election called to be held August 11, 1936.

In an opinion on this question dated May 22, 1930, my predecessor in office, the Honorable Fred H. Davis, now a member of the Supreme Court of Florida, said:

"Qualification fees paid by candidates cannot be refunded when the candidate, through his own act in failing to comply with the law, has disqualified himself as a candidate."

In an opinion by me on the same subject, dated May 20, 1932, I concurred with the said opinion of Judge Davis. My information is that Mr. _____ disqualified himself as a candidate by his failure to file, within the time required by law, his campaign expense statement as a candidate for the office of United States Senator in the special primary to be held August 11. It is my opinion, therefore, that the qualification fee paid by him as such candidate cannot be lawfully refunded.

June 27th., 1935.

ELECTIONS, EXECUTIVE COMMITTEES, CHAPTER 16984,
SENATE BILL 334 OF 1935

Dear Sir:

Replying to your favor of June 22nd., permit me to say it is my opinion that Senate Bill No. 334 became a law May 24th, 1935, for the reason that Section 3 reads as follows:

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"This Act shall take effect immediately upon its becoming a law."

It was approved May 24th. and filed in the office of the Secretary of State the same date.

The Act contains the following provision, to-wit:

"The County Executive Committee of each political party shall consist of two members, a man and a woman, from each election precinct within the county, who shall be elected for two years at the primary held in the year 1914, and every two years thereafter."

The Act also contains the following provision, to-wit:

"Provided further, that in the event of no election of committeemen or committeewomen, or of a vacancy occurring from any other cause in any County Executive Committee, the Chairman of the State Executive Committee shall have the power to fill such vacancy by appointment from among the members of the party residing in the election district where such vacancy occurs."

You ask to be advised whether or not in my opinion you, as State Chairman, should appoint a woman in each precinct in the State under the provisions of the Act. Permit me to say that the provisions of the Act are so worded that it leads to the conclusion that the members of the Committee should be elected in the first instance, including the women members. There never having been heretofore a law requiring women members of the County Executive Committees, and the provisions of the Act appearing to authorize the election of women members, it seems to me that it was probably the legislative intent that one man and one woman should be elected from each precinct at the next election and every two years thereafter, however, I am inclined to the view that you can, under the provisions of the Act, appoint a woman in each precinct of the State at this time. There does not appear to be anything in the law which would prohibit such action.

April 30, 1935.

ELECTIONS

Dear Sir:

I am in receipt of your letter of the 25th instant, stating that you have reached the age of 21 years on March 28, 1935; that between September, 1932 and February 1934 you were a resident of Gainesville at the University of Florida, except for a period of about three weeks; that during such period your personal belongings remained there; that it is your desire to become a resident of Florida upon your return to school this

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fall. You make inquiry if you would be able to register as a voter in Alachua County upon your return.

Section 248, Compiled General Laws of Florida, 1927, with reference to qualified electors, contains the following language:

"Every person of the age of twenty-one years and upwards, that shall at the time of registration be a citizens of the United States, and shall have resided and had his or her habitation, domicile, home, and place of permanent abode in Florida for one year, and in the county for six months, shall, if otherwise qualified according to law in such county, be deemed a qualified elector at all elections under the Constitution."

Section 371, Compiled General Laws of Florida, 1927, and Section 371 (1), Compiled General Laws of Florida, 1934 Supplement, require the registration of electors as well as the payment of certain poll taxes.

Section 3 of Article VI of the State Constitution, as well as Section 257, Compiled General Laws of Florida, 1927, requires applicants for registration to take the following oath:

"I do solemnly swear or affirm that I will protect and defend the Constitution of the United States and of the State of Florida, that I am twenty-one years of age, and have been a resident of the State of Florida for twelve months and of this county for six months, and I am qualified to vote under the Constitution and laws of the State of Florida."

The residence required under the statutes referred to is residence immediately preceding the time of registration. Such required residence, however, would permit of short vacations from the State if the person had an abiding purpose to continue his residence in this State. Legal residence is a matter of both fact and intent. In addition to actual residence the person must have had a settled intention to make Florida his permanent home. Coming to Florida in the fall of 1935 to enter school with the purpose of making Florida your permanent home would not be sufficient to entitle you to registration as an elector until you shall have lived twelve months in the State and six months in the county after forming such purpose to reside here permanently.

This office is not required to advise others than State officials and certain State boards but as a matter of courtesy I have given you the above information.

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March 8, 1935.

ELECTIONS—BIENNIAL REGISTRATION

Dear Sir:

Answering your letter of the 27th ultimo, I beg to say I do not know of any law requiring a person in Duval County to register every two years for General Elections.

Your attention is called to Sections 366 and 367, Compiled General Laws of Florida, 1927, with reference to biennial registrations for Primary Elections. You will note that Section 366 provides that all persons so registering shall be deemed duly registered electors for the General Election next following the Primary for which they registered and for any Special Election held subsequent to the General Primary for which they registered and prior to the next following general Primary.

SECTION 3

SPECIAL

July 29, 1936.

ELECTIONS—SPECIAL PRIMARY—CANDIDATES FAILURE TO FILE
CAMPAIGN EXPENSE STATEMENTS ON TIME*Dear Sir:*

This will acknowledge receipt of your favor of July 28th, the pertinent part of which reads as follows, to-wit:

"There arrived at this office yesterday afternoon, July 27, 1936, a sworn campaign expense statement of Robert J. Boone under date of July 25, 1936, accompanied by a letter of transmittal, both of which I attach hereto, and will kindly ask that you return when you have finished examining same.

"Mr. Robert J. Boone qualified as a candidate for United States Senator in the Special Primaries called by the State Democratic Executive Committee to be held on August 11th (with a second primary September 1st if necessary). Mr. Boone's qualification oath was in proper form and his qualification fee in proper amount and both filed in this office within the time limit prescribed by statute for candidates to qualify in the primaries.

"According to the statutes candidates are required to file their first campaign expense statement not more than thirty days nor less than twenty-five days prior to the primary. July 18th was the last day in which such statement could be filed and be not less than twenty-five days prior to the date fixed by the Executive Committee for the primary.

"As you will note from Mr. Boone's communication he calls attention to the fact that the entire question of holding the primaries was in litigation in the Supreme Court, the court not having rendered a decision until July 23rd, and my certificate of compliance with the court's order having been filed on July 24th.

"The qualification oaths and fees of Mr. Boone and all other candidates who qualified were not officially receipted for by this office until after the Supreme Court had rendered its decision or specifically on July 24th.

"Mr. Boone, as you note in his letter of the twenty-fifth, calls attention to the fact that he has filed his expense statement within three days after the officials acceptance of the qualification fees and asks that I accept and file his campaign expenses statement *nuc pro tunc* as of the proper time it should have been filed. Mr. Boone further calls attention in his affidavit attached that after filing his qualification oath and fee he was called out of the State on business and on account of the illness of a member of his family and did not return until the 21st of July.

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"Will you kindly give me your opinion on the following questions as to my official duty in the primaries:

First: Is it my official duty under the law to receive and file the campaign expense statement tendered by Mr. Boone and treat the same as having been made in compliance with law?

Second: If not, is it my official duty to certify to the county commissioners of the several counties that Mr. Boone did not file any campaign expense statement within the time required by law?"

You request my opinion on the two questions stated above, and I will endeavor to reply thereto in consecutive order.

The primary elections to be held on August 11th and September 1st, under the opinion of the Supreme Court of Florida in the case of *State ex rel Charles O. Andrews, et al., Relators, versus R. A. Gray*, as Secretary of State, Respondent, which opinion was filed July 23, 1936, appears to make all of the valid and subsisting primary election laws as of July 23, 1936, applicable to the special primary elections to be held on August 11th and September 1st. We find that the State Executive Committee of the Democratic Party issued its call for the special primary elections mentioned above, and filed a copy thereof in the office of the Secretary of State. We find that the call required candidates for the office of United States Senator to file their qualification oath and qualification fee with the Secretary of State not later than July 11th.

The Secretary of State declined to accept the qualification fees and oaths of three candidates, namely, Charles O. Andrews, Doyle E. Carlton and Robert J. Boone, so as to lay a predicate for testing in the Supreme Court the authority of the State Democratic Executive Committee to call a special Democratic Primary Election under the laws of this State.

It is evident from the document filed in the office of Secretary of State by the State Democratic Executive Committee of the State of Florida, designated as the "call", that the Executive Committee was of the opinion that a special statutory primary election could be called and held in this State. The Supreme Court in its opinion of July 23rd, sustained that view, and, therefore, it appears to be settled that all of the primary election laws in effect on July 23, A. D. 1936, are applicable to the said special primary elections which were called by the Executive Committee.

We find that candidates Charles O. Andrews and Doyle E. Carlton filed their expense statements with the Secretary of State according to law, but that candidate Robert J. Boone failed to file his first campaign expense statement as required by Section 15 of Chapter 13,761, Laws of Florida, Acts of 1929, which requires candidates for national or state office to file detailed itemized statements of campaign expenses

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not more than thirty days nor less than twenty-five days prior to the first primary election.

The latest authority from the Supreme Court on the question of whether or not you, as Secretary of State, should accept the campaign expense statement of candidate Robert J. Boone, appears in 115 Fla. 3, 155 So. 100, in the case of State ex rel Ashton versus Harris, et al.

"In this case the Circuit Court held that the requirements for filing statements by candidates in primary elections (Section 421, C. G. L., 364 R. G. S., as amended by Chapter 13761, Acts 1929) is mandatory as to the time for filing, and that where a candidate for nomination to a county office failed to file the first statement not more than thirty days nor less than twenty-five days prior to June 5, 1934, the date of the next primary election, mandamus would not issue to compel the Board of County Commissioners and the Clerk of the Circuit Court to certify the name of the delinquent candidate to be voted on as such candidate, even though the required statement had been made out and filed on the day immediately following the last day, (May 11, 1934) allowed for filing candidates' statements. The alternative writ was applied for May 12, 1934, the next day after the time for filing had expired.

"The alternative writ sets up no attempted excuse for the failure to file the required statement on time, and according to the allegations of the writ the statement was not filed until May 11, 1934, the last possible day on which it could be legally filed under the law. In the absence of some special showing of excuse at least, the Circuit Court was not in error in refusing to recognize the filing of a statement out of time, even though it was only one day late. *Whether any excuse at all could be set up as an excuse for non-compliance is not necessary to be now decided, and this Court does not express any opinion on it.*" Continuing, the Supreme Court in the same opinion said:

"The Florida statute allows five full days (from the thirtieth to the twenty-fifth day) in which to get the first required statement into the hands of the Clerk of the Circuit Court or the Secretary of State, as the case may be. The statute having drawn a line which is clear and certain, this Court is not permitted to draw another and different one, at least in the absence of some showing of special and reasonable excuse for not filing the statements on time, such as sudden illness, accident, mailing in time to reach the filing officer in ample time before the last day expires, and the like."

The Supreme Court held that the Circuit Judge did not commit error in quashing the alternative writ and entering final judgment against the Plaintiff in error.

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It will be observed from the opinion quoted above that the Supreme Court of Florida refused or declined to pass on the question of *whether any excuse at all* could be set up as an excuse for non-compliance with the statutory requirement for the filing of expense statements by candidates for office within the statutory period of time.

We observe that candidate Boone offers the excuses for not having filed his campaign expense statement within the statutory period of time, first, "that he was called out of the State on business and, on account of the illness of a member of his family, did not return to the State until the twenty-first day of July", and, second, "that the Supreme Court did not authorize you as Secretary of State to accept the qualification oath and fee until seven days after the time when the first campaign expense statement was due."

We observe that candidate Boone has, under date of July 27th, filed with you his campaign expense statement, and has requested you to accept the same for filing nunc pro tunc as of July 17, 1936.

Your first question reads as follows:

"Is it my official duty under the law to receive and file the campaign expense statement tendered by Mr. Boone and treat the same as having been made in compliance with law?"

In reply to this question, and in view of the premises stated above, it is my opinion that you may in your official capacity as Secretary of State, receive and file the campaign expense statement tendered by Mr. Boone, and that as an administrative officer, it is not your duty to question whether or not the statement was filed in compliance with statutory requirements.

Your second question reads as follows:

"Is it my official duty to certify to the county commissioners of the several counties that Mr. Boone did not file any campaign expense statement within the time required by law?"

In reply to your second question, permit me to say, Section 8197 of the Compiled General Laws of Florida, 1927, reads as follows, to-wit:

"8197. (5933) Candidate failing to file statements of campaign expenses not to have name printed on ballot; officers issuing certificate, etc.—Any candidate who fails to make and file the statements required by Section 421, in the form and at the time specified, shall not have the right to have his name placed upon the ballot to be used in the primary election, and those intrusted with the preparation of such primary ballots shall, upon the certificate of the officer with whom said statements are required to be filed, that a candidate has failed to file such statement or statements, omit his name therefrom. The name of no candidate failing to file such statements as required

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by said section shall be allowed or printed on the official ballot used in the general State and county election, and no committee, officer or board authorized to issue commissions, certificates of election and certificates of nomination shall issue any such commission or certificate to any candidate who fails to comply with the provisions of the said section. Any officer, and the members of any board or committee violating the provisions of this section shall upon conviction be fined not exceeding five hundred dollars, or be imprisoned not exceeding six months. (Id. § 20.)"

You will observe from the statute quoted above that it is the duty of the officer with whom campaign expense statements are required to be filed to notify those intrusted with the preparation of the primary ballots, when a candidate has failed to file his campaign expense statement or statements, to omit his name from the ballot. As I understand the matter, the County Commissioners are the persons "intrusted with the preparation" of the primary ballots, and the Secretary of State is the officer, where a person is a candidate for a State or National office, with whom the campaign expense statement is required to be filed, and, therefore, it appears to me that the only duty imposed upon you by law is to notify the County Commissioners of the several counties of the State of Florida that candidate Robert J. Boone failed to file his first campaign expense statement within the time prescribed by law.

July 3, 1936.

ELECTIONS—SPECIAL AND GENERAL—LAST DAY TO REGISTER
AND PAY POLL TAXES

Dear Sir:

Replying to your favor of July 1st., permit me to say, you ask to be advised the last day upon which a person may pay poll taxes as a prerequisite to vote in the Special Primary Election to be held on August 11th.

In answer to this question, permit me to say, the State Democratic Executive Committee by Resolution provided that those electors who were otherwise qualified prior to the Primary Election of June 2nd., that is to say, those who were registered and would have been entitled to vote had their poll taxes for the two years next preceding the year 1936 been paid, may now pay their poll taxes on or before the third Saturday preceding the day of the first Special Primary Election to be held on August 11th., which would be Saturday, July 25th. and vote in said Special Primary Election.

You ask to be advised the last day on which persons can register prior to the General Election to be held on November 3rd. this year, and in reply to this question permit me to say:

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Section 263 of the Compiled General Laws of 1927, is the section governing the opening and closing of the registration books in the districts and in the office of the Supervisor of Registration prior to the General Election. This section provides that the registration books in the office of the Supervisor of Registration shall be kept open from the first Monday in August, which is August 3rd. this year, until the second Saturday of the month preceding the day in each year in which there shall be a General Election. The second Saturday in the month preceding the day of the General Election to be held on November 3rd., is Saturday, October 17th. of this year.

The same section provides that the district registration books shall be kept open from the first Monday in September until the second Saturday of the month preceding the day of the General Election, which would be October 17th. The first Monday in September, the day upon which the district registration books should be open, as you will observe by reference to the Calendar, is September 7th.

You ask to be advised the last day for payment of poll taxes prior to the General Election to be held November 3rd. this year. The sixth paragraph of Section 248 of the Compiled General Laws provides that no person shall be permitted to vote at an election who shall have failed to pay at least on or before the fourth Saturday preceding the day of such election his or her poll taxes for the two years next preceding the year in which such election shall be held. The fourth Saturday preceding November 3rd., the day of the General Election this year, is Saturday, October 10th.

Relative to the qualification of electors to vote in the Special Primary Election to be held August 11th. and September 1st. this year, permit me to say there is to be a test case brought before the Supreme Court within the next few days for the purpose of having the Supreme Court prescribe the applicable law. Whether or not the Court in its opinion will in any way affect the information herein contained regarding the qualification of electors for such election remains to be seen, however, until the Supreme Court has rendered its opinion, the ruling herein contained should be observed relative to the Special Primary Election to be held on August 11th. and September 1st. this year.

August 27, 1936.

SLOT MACHINES—SPECIAL ELECTIONS—PROCEDURE FOR
CANVASSING RESULTS OF ELECTION

Dear Sir:

This is in reply to your inquiry of August 21st.

Inasmuch as Section 12-A of Chapter 17257, Laws of Florida, Acts of 1935, provides for the submission to the electors at a *general* election

SPECIAL

of the question of whether or not slot machines shall be legal in a particular county, Section 318, and Sections 341-344, Compiled General Laws of Florida, 1927, would apply.

The votes would therefore be counted by the inspectors and clerk, in accordance with Sections 341 and 342, and the canvass of the returns would be made by the County Canvassing Board referred to in Sections 343 and 344 in the manner stated therein.

While Sections 343 and 344 appear at first blush to provide for canvassing the returns only insofar as election of officers is concerned, Section 343 provides generally for the existence of a "County Canvassing Board of Elections", and Section 344 provides that said Canvassing Board "shall compile the result of the election."

It is my opinion that the general terms appearing in the statutes are sufficient to charge the County Canvassing Board with the duty of canvassing the results of the election, insofar as the abolition of slot machines is concerned. This view is further strengthened by the provision in Section 342, providing that the certificates of the inspectors and clerk shall contain the number of votes cast for and against any question submitted, which certificates shall be signed by the inspectors and clerk, and forwarded to the county judge and supervisor of registration.

February 23, 1935.

ELECTIONS, SPECIAL, QUALIFICATION OF ELECTORS

Dear Sir:

This refers to your inquiry of February twenty-third, and I beg to advise that Chapter 16014, Acts of 1933, reads as follows:

"Section 1. That at all special elections called and held to fill a vacancy in the office of State Senator or member of the House of Representatives, all electors who were qualified to vote at the last preceding General Election and who at the time of the special election are qualified electors in all other respects than as to poll tax payments, are declared to be duly qualified electors in such special election, without payment of any further or other Poll tax.

"Section 2. All laws and parts of laws in conflict herewith are hereby repealed.

"Section 3. This Act shall take effect immediately upon its passage and approval by the Governor, or upon its becoming a law without his approval.

"Approved April 8, 1933."

SPECIAL

We construe the provisions of the Chapter quoted above to mean that all persons who were qualified to vote at the last general election shall be permitted to vote at an election called under said Chapter without payment of poll taxes for the year next preceding the year in which the special election is held under said Chapter.

Electors, otherwise qualified *than by payment of poll taxes who were not qualified* to vote in the last general election, should be required to pay poll taxes for the two years next preceding the year in which the special election is held.

SECTION 4

LOCAL OPTION

January 9, 1935.

PAYMENT OF POLL TAX IN ORDER TO VOTE IN LOCAL OPTION
ELECTION*Dear Sir:*

This refers to your letter of January 7th., relative to the payment of poll taxes in order to be able to vote in a local option election called to be held January 15th.

Your attention is called to Sections 248 and 302 of the Compiled General Laws of Florida, 1927, which provides that no person shall be permitted to vote at any election who shall have failed to pay his or her poll taxes for the two years next preceding the year in which such election is held. It is, therefore, my opinion that the payment of 1933 and 1934 taxes is necessary to qualify one to vote in such an election held in the year 1935.

May 21, 1935.

SUPERVISOR OF REGISTRATION, OPENING BOOKS BEFORE
LOCAL OPTION ELECTION*Dear Sir:*

In your letter of the 18th instant you inquire whether you are required to open the registration books preceding the holding of a local option election, and whether it is necessary for electors to have a poll tax receipt for 1934 to entitle them to vote.

The present Legislature has not up to this time enacted any laws relating to local option elections or with respect to intoxicating liquors, and we are therefore still operating under the law in effect December 31, 1918.

Section 1210 of the General Statutes of 1906 provides that for local option elections electors may be registered as provided in the general law for registration for special elections. The fact is that we have no provision for registration for special elections, and it is my opinion that since we have not time, there is no authority for opening the registration books for local option elections.

Section 1210 provides that electors shall have the same qualifications for and pre-requisites to voting as in elections under the general election law. It follows, therefore, that they are required to have their poll tax receipts for the two years immediately preceding the year in which the local option election is held. In this particular instance it would require poll tax receipts for 1933 and 1934.

SECTION 5

MISCELLANEOUS

September 28, 1936.

ELECTIONS—LEGALITY OF PLACING RUBBER STAMPS
In ELECTION BOOTHS

Dear Sir:

This is in reply to your inquiry of September 26. Under date of August 11, 1932, I rendered an opinion stating

"It is illegal to use stickers on any ballot and it should not be done, as it would invalidate the ballot."

This opinion is reported at page 1048 of the Attorney General's Report for the Years 1931-32.

It is likewise my opinion that it is illegal to have rubber stamps placed in the booths for the purpose of stamping the names of independent candidates on the ballot.

September 16, 1936.

ELECTIONS—SOLDIERS AND SAILORS

Dear Sir:

I am in receipt of your letter of the 15th instant with reference to Army men on duty voting in this State. You fail to state, however, whether they are former residents of this State and now on duty out of the State or if they are from some other State and now on duty in this State.

In reply I beg to say that if the parties mentioned were formerly residents of this State but are now on duty in some other State the fact of their serving in the Army and being out of the State would not of itself disqualify them from voting in this State if they are registered voters and are otherwise qualified. If the parties mentioned are from other states and are on duty in this State and have been here a sufficient time and are in position to take the oath prescribed by Section 373, Compiled General Laws of Florida, 1927, and Section 3 of Article VI of the State Constitution it would appear that they would be authorized to register and otherwise qualify to vote in our elections.

If you have in mind soldiers and sailors being permitted to vote under Section 249, Compiled General Laws of Florida, 1927, without registration and the payment of any poll tax, I beg to advise that said Section applies only to municipal elections. This Section was originally passed as Chapter 7950, Acts of 1919, and you will note that under said

MISCELLANEOUS

title the said Act applies only to those engaged in the World War and only to municipal elections held in the State.

For your information your attention is called to Chapter 16,987, Laws of Florida, Acts of 1935, providing for the registration of qualified electors from without the State in any Primary, General, School, Municipal, or Special Election and providing the procedure in connection therewith.

July 22, 1936.

BOND ELECTIONS—FREEHOLDER—HOMESTEAD EXEMPTIONS

Dear Sir:

Yours of July 17th. addressed to the Attorney General, reads as follows:

"We have been informed that you have written an opinion holding that the head of a family, residing in his own home and hence exempt from taxation under the homestead amendment, is a freeholder entitled to vote in bond elections. Will you kindly send us a copy of this opinion."

In reply to the above permit me to say we have made a search for the opinion referred to in your letter, but have failed to find the same. If you will give us the approximate date of the opinion, we might be able to locate it, if such an opinion has been written. Not being able to find the opinion referred to, I am of course reluctant to express what might be considered an official opinion from this office; however, I will give you the definition of a freeholder as defined by Hon. Fred H. Davis, former Attorney General, in his Biennial Report for the years 1927-1928, page 433, which reads as follows:

"A freeholder is one who owns land in fee or for life or for some indeterminate period. A freehold estate is defined as an estate of inheritance or for life in real property. In order to be a freeholder a person must have a property right in and title to real estate amounting to an estate of inheritance or for life or for an indeterminate period."

"Thus, a wife living with her husband on land, the title to which is in the husband and which is occupied by them jointly as a family homestead, as well as a husband living with his wife on land occupied by both jointly as homestead and legal title to which is in her, are not freeholders."

"A Vendee of land in possession of such land under a contract made by the woman who sells this land to the vendee is a freeholder as well as a tenant by entirety. (Husband and wife holding property jointly as husband and wife.)"

"A person who owns a vested remainder in real estate is also a freeholder. Thus, a man who had sold another a 99 year lease on his pro-

MISCELLANEOUS

perty would remain a freeholder. Also the man to whom the 99 year lease was sold would be a freeholder. The holder of a lease for life on realty is a freeholder."

"The foregoing definitions are taken from various decisions of the courts of the country and I trust fully answers what you desired to know in your communication of October 22nd."

"Very truly yours,

FRED H. DAVIS, Attorney General."

It appears from the definition given by former Attorney General Davis that a freeholder is entitled to vote in bond elections where one of the qualifications is that the elector shall be a freeholder.

April 16th., 1936.

ELECTIONS—HIGHWAYS—POSTERS

Dear Sir:

Replying to your favor of April 14th., in which you ask to be advised whether or not it is a violation of the law to post a picture of a candidate beside a main highway in this State, permit me to say Section 2470 of the Compiled General Laws, 1927, reads as follows:

"It shall be unlawful for any person, firm or corporation to erect or cause to be erected, place or cause to be placed any sign-board, sign, sign post, placard or poster, within the right of way of any public highway in any county of the State of Florida, having a population of not less than 63,000, and not more than 65,000, according to the 1925 State census."

The statute quoted above is the only statute we find on this subject.

March 7th., 1936.

ELECTIONS—CANDIDATES—PASSING OUT BOOK MATCHES
WITH CARD

Dear Sir:

Replying to your favor of March 6th. in which you ask to be advised whether or not under the law it would be legal for candidates for public office "to pass out book matches with their cards printed on the outside of the book," permit me to say, Section 8182 of the Compiled General Laws limits the purposes for which a candidate may expend money to the following items:

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"For his traveling expenses while campaigning, fees for qualifying, stenographic work, Clerks of his campaign headquarters to address, prepare and mail campaign literature, telegrams, telephones, postage, freight, express, stationery, list of voters, office rent, newspaper advertising, printing and the renting of hall in which to address voters."

You will observe from the quotation above that the expenditure of money for any other purpose than those set out in the statute would be a violation of the law. It appears that the law was designed to prohibit the giving by any candidate anything of value in the shape of a gift that would in any way influence a voter to vote for a particular candidate.

March 22, 1935.

ELECTIONS—NATURALIZATION

Dear Sir:

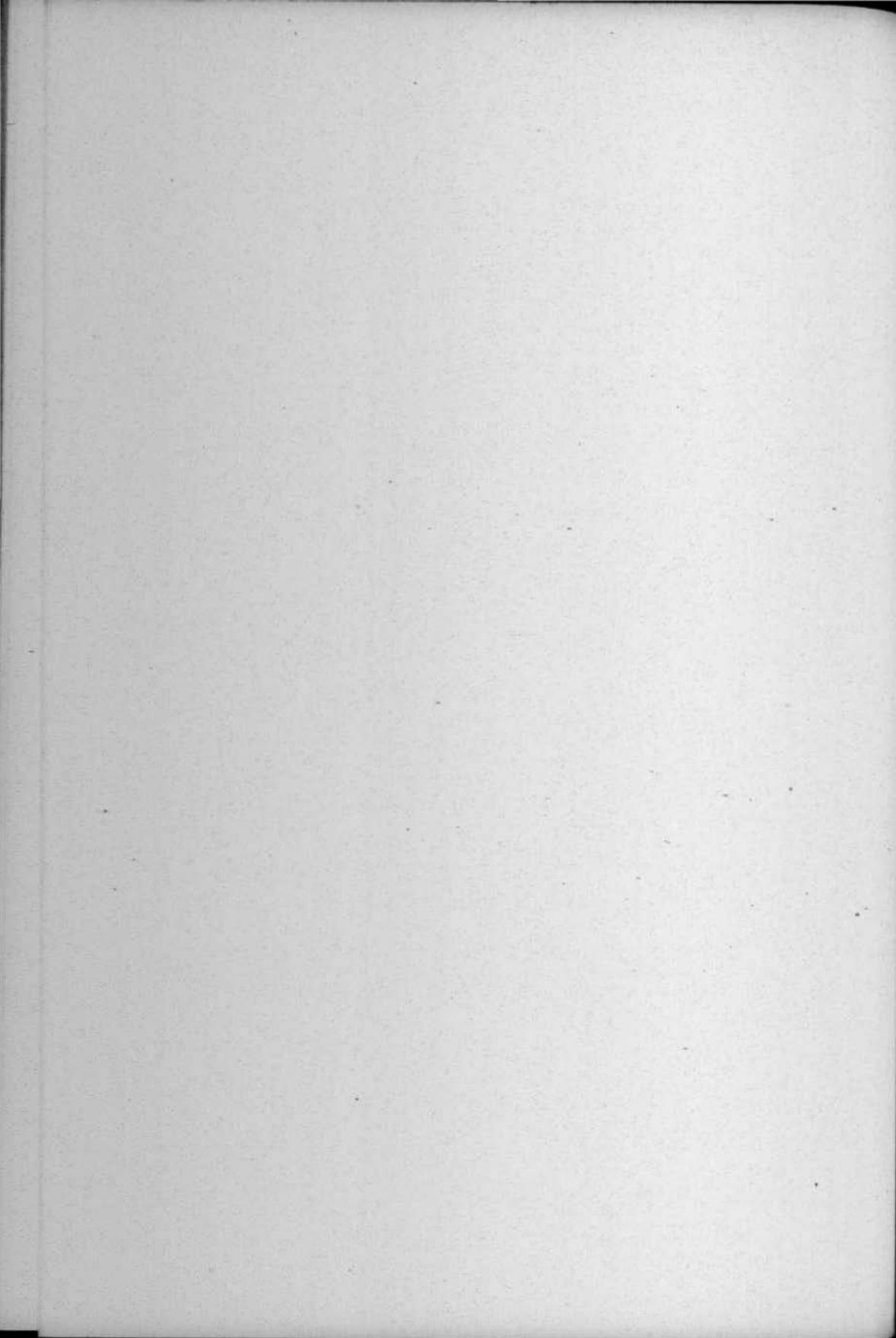
I am in receipt of your letter of the 16th instant, with reference to naturalized persons holding office.

In reply I beg to call your attention to Section 1 of Article XIV, Amendments to the Federal Constitution, reading as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

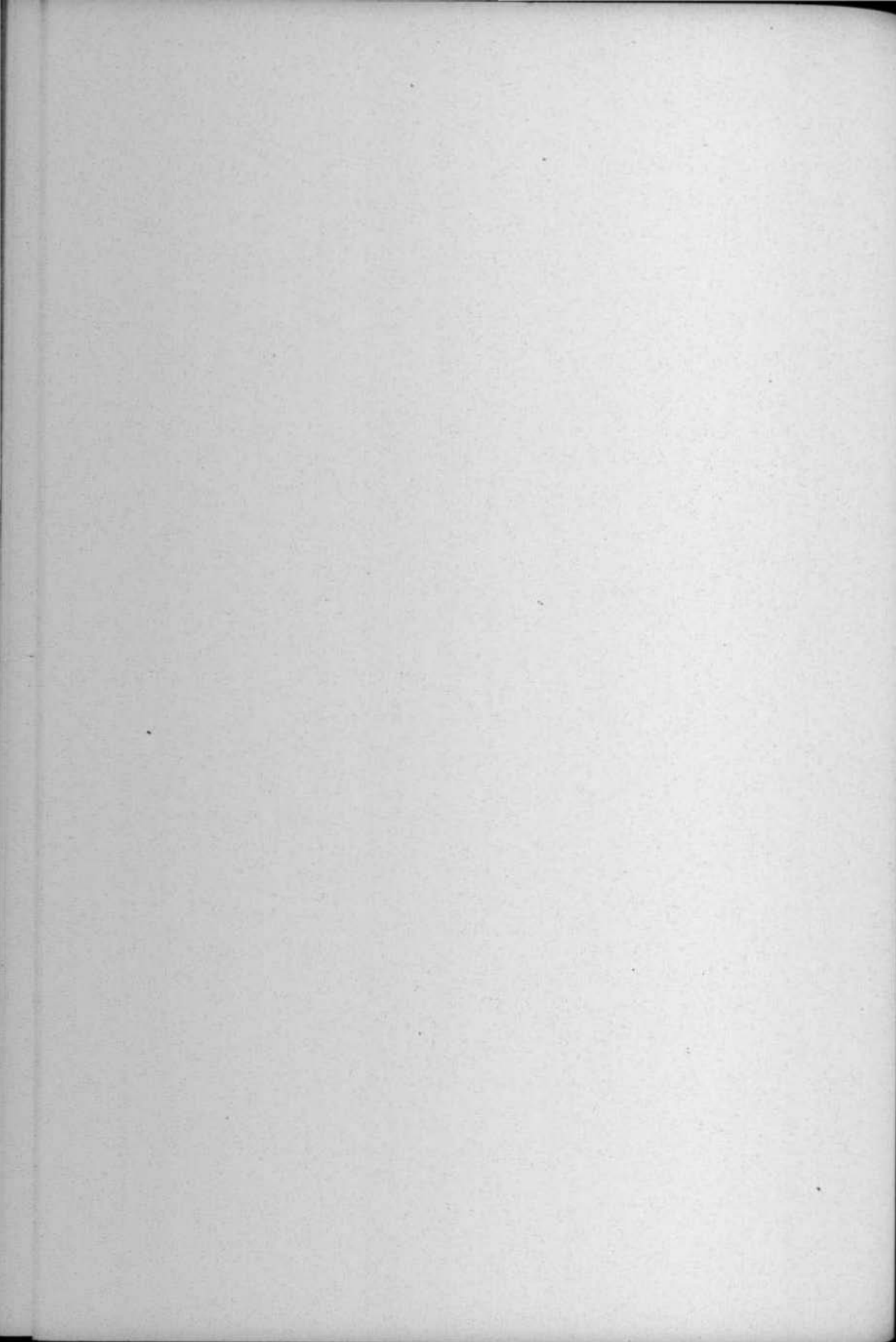
From the above it appears that naturalized persons, when otherwise qualified, are entitled to hold office and enjoy the privileges of all other citizens.

I am enclosing herewith copy of letter from this office addressed to Hon. ———, Justice of the Peace, under date of April 28, 1932, with reference to naturalized persons voting, which will probably be of interest to you in connection with your inquiry.



CHAPTER VII

APPROPRIATIONS



SECTION 1

APPROPRIATIONS

September 7, 1935.

APPROPRIATIONS—CHAPTER 16772 OF 1935—MISCELLANEOUS—
LANE DRUG STORES, INC., ET AL., VERSUS LEE, AS
COMPTROLLER, AND OTHER CHAIN STORE SUITS*Dear Sir:*

I have your letter of September 3rd, in which you state that the Supreme Court of Florida in an order entered August 31, 1935, in the case of *STATE OF FLORIDA ex rel C. CHAVERS, et al., Realtors, versus J. M. LEE, as Comptroller, Respondent*, directed you as the judicial agent of the Court to receive, accept, deposit and hold and faithfully account for all monies that may be tendered to you under the terms of Chapter 16,848, Laws of Florida, Acts of 1935. The Court in its order directed you to retain the monies so paid pending the final determination of the constitutionality of Chapter 16,848, *supra*. You state that Section 14 of the Act makes an appropriation for the expenses of its enforcement. You request my opinion as to whether or not the expenses of the enforcement of the Act can be paid from the appropriation known as "Expense Collecting Revenue" until the constitutionality of the Act is finally determined.

Under the terms of the above mentioned Court order, you are required to hold and account for all monies paid to you under the Act and it necessarily follows that you can not expend any of these funds for the expenses of the enforcement of the Act. The Legislature has made provision for paying the expenses of the collection of the revenue of the State. See Chapter 16,772, Laws of Florida, Acts of 1935, under the general heading "Miscellaneous." It is my opinion that under the circumstances the expenses of the enforcement of the Act can be paid from the appropriation of "Expense Collecting Revenue," at least until the Court finally determines the constitutionality of the Act.

November 21, 1935.

APPROPRIATIONS. COMPTROLLER AUTHORIZED TO PAY EX-
PENSES OF ADMINISTERING CHAPTER 17257, ACTS OF
1935, OUT OF STATE OCCUPATIONAL LICENSE
TAXES COLLECTED THEREUNDER*Dear Sir:*

I have your letter of November 21, in which you request my opinion upon the following questions:

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(1) Whether or not the Comptroller may use so much of the money received as State Occupational License Taxes under Chapter 17257, Laws of Florida, Acts of 1935, as may be necessary to pay the expenses of administering and enforcing the law?

(2) Whether or not the Comptroller has authority to set up out of the money received under this law in the State Treasury an expense account to be used in paying the expenses of administering the law?

The administration and enforcement of the Act are placed in the hands of the Comptroller (Section 6) and he is authorized "to appoint and deputize a sufficient number of inspectors to properly enforce the provisions of this Act and the rules and regulations made pursuant thereto; to give instructions to and provide all forms to county tax collectors; and to do any and all acts necessary or expedient for the strict enforcement of the provisions of this Act." Section 11 of the Act reads as follows:

"All money collected hereunder for the State license tax as herein provided, shall, after the expense of administering this Act, be promptly remitted, as required by law, to the Comptroller and placed in the Treasury to the credit of the General Revenue Fund."

It is my opinion:

(1) That it was the intention of the Legislature to require the Comptroller to administer and enforce the law and to appropriate for that purpose sufficient money out of the State Occupational License Tax collected under the Act. The Comptroller is authorized to use, out of the State Occupational License Tax Money collected under the Act, whatever amounts may be necessary to pay the expenses of administration and enforcement.

(2) The Comptroller may set up in the office of the State Treasurer an expense account for the purpose of paying the expenses of administering and enforcing the Act. He may place in this Act whatever part of the receipts from the State Occupational License Tax collected under the Act that he may consider as reasonable and necessary to pay the expenses of administration and enforcement and the balance on hand must be "placed in the Treasury to the credit of the General Revenue Fund."

July 20, 1935.

APPROPRIATIONS—COST OF ENFORCEMENT OF CHAPTER 16,848,
MAY BE PAID FROM COLLECTION OF REVENUE FUND FROM
GENERAL APPROPRIATION BILL WHERE SUFFICIENT
TAXES HAVE NOT BEEN COLLECTED UNDER THE
ACT TO PAY COST OF ENFORCEMENT

Dear Sir:

I have your letter of even date in which you state that there have been numerous suits filed seeking to restrain you from collecting taxes

APPROPRIATIONS

under Senate Bill 724, being Chapter 16,848, Laws of Florida, Acts of 1935, and that as a result of these suits sufficient taxes have not been collected thereunder to pay the expense of defending the suits and expenses incident to the enforcement of the Act. You request my opinion upon the question of whether or not you may pay these expenses from the item, Collection of Revenue in the General Appropriation Bill of 1935, which is House Bill 1256, and is also referred to as Chapter 16,772.

Section 14 of Chapter 16,848, reads as follows, to-wit:

"There is hereby annually appropriated out of funds coming into the Comptroller's hands under the provisions of this Act, the amount necessary for the effective and efficient enforcement of the provisions of this Act, and for that purpose the Comptroller is authorized to employ such additional employees as he may from time to time deem necessary to carry out the terms and provisions of this Act. * * *"

The Act gives you authority to pay from the funds collected thereunder whatever amounts may be necessary for the effective and efficient enforcement of the provisions of the Act and so long as there is sufficient money on hand in this fund, you would not be authorized to pay any of the expenses of enforcement from any other fund. However, when the Act was passed the Legislature knew that funds for its enforcement would not be immediately available. The General Appropriation Bill of 1935 carries an item "Collection of Revenue" which is intended for use by you in the collection of State Revenue, and its use is not restricted to the collection of any particular State Revenue but it may be used wherever necessary to collect any State Revenue.

In view of the above, I am of the opinion that until funds are available from taxes collected under Chapter 16,848, *supra*, you may use from the Collection of Revenue Fund of the 1935 General Appropriation Bill such funds as may be necessary for the effective and efficient enforcement of the Act. Expenses incurred in the defense of suits concerning the Act are to be considered as expense for the enforcement of the Act. It is also my opinion that when funds come into your hands from taxes collected under the Act sufficient to reimburse the Collection of Revenue Fund for money obtained from that fund for the purpose of paying the expense of enforcement of the Act, you should reimburse the Collection of Revenue Fund for all monies so advanced.

June 18, 1936.

APPROPRIATIONS—CHAPTER 17,474 OF 1935

Dear Sir:

I am in receipt of your letter of the 10th instant with reference to appropriation under Section 4 of Chapter 17,474, Laws of Florida, Acts

APPROPRIATIONS

of 1935, which appropriates \$4,000.00 annually for the purposes of said Act. You make inquiry if any part of the appropriation for any one year not used during such year may be carried forward and used during the next year.

The appropriating part of said Section reads as follows:

"The sum of Four Thousand (\$4,000.00) Dollars or so much thereof as may be necessary for the purpose hereof is hereby appropriated for the fiscal year ending June 30th, 1935, from funds not otherwise appropriated for such fiscal year and annually thereafter until the year 1942, * * * "

In view of the above language it appears that the appropriations are definite annual appropriations and the statute does not appear to contemplate that any balance from one year may be carried forward and used the succeeding year.

May 1, 1936.

REAPPROPRIATION OF FEDERAL GRANTS OF MONEY TO FLORIDA
UNDER PROVISIONS OF SECTION 4 OF CHAPTER
16772, ACTS OF 1935

Dear Sir:

This is in reply to your telegraphic request for my opinion as to whether or not moneys granted Florida for children's welfare purposes are automatically reappropriated for the use of the State Board of Social Welfare under Section 4 of Chapter 16772, Laws of Florida, Acts of 1935, if deposited in the State Treasury. You previously called my attention to the fact that the Florida Legislature in 1935 made no specific appropriation of State funds for the State Board of Social Welfare.

It is my opinion that the funds so granted should be received by the State Treasurer in accordance with Article 4, Section 24, of the Florida Constitution, and that such funds should be disbursed upon order of the Comptroller, countersigned by the Governor. Section 4 of Chapter 16772, Laws of Florida, Acts of 1935, concerning which you inquire, reads as follows:

"Federal money appropriated by the Congress of the United States to be used for State purposes, whether by itself or in conjunction with moneys appropriated by the Legislature of this State, is hereby reappropriated as far as may be necessary to the purpose for which the same was made available and in so far as the same is permitted by the Federal Statutes."

It is my opinion that said Section 4 does automatically reappropriate the grant for child welfare purposes. It is to be noted, however, that

APPROPRIATIONS

Section 4 reappropriates the money "to the purpose for which the same was made available." Construing said Section 4 of the General Appropriations Act together with Section 27 of Chapter 17477, Laws of Florida, Acts of 1935, it is my opinion that while the money must be used for the purpose for which it was made available, this does not prohibit the necessary administrative costs connected with that particular purpose from being paid.

November 6, 1935.

APPROPRIATIONS—OPERATING EXPENSES OF BEVERAGE DE-
PARTMENT—PAYMENTS UNDER CHAPTERS
15,884 AND 16,774 RESPECTIVELY

Dear Sir:

I have your letter of the 4th instant advising that certain questions have arisen concerning the payment of expenses of the Beverage Department under the Beverage Act, Chapter 15,884, Acts of 1933, and the Beverage Act, Chapter 16,774, Acts of 1935. You list a statement of receipts under Chapter 16,774 during the period from June 21st to June 29th, 1935. You also list a number of items, some of which were paid prior to June 21st, 1935, and some subsequent thereto.

The statute involved is Section 18 of Chapter 16,774, Acts of 1935, reading as follows:

"There is hereby appropriated out of such unexpended funds as shall have been collected under Chapter 15884, Acts of 1933, regulating the manufacture, sale and transportation of beverages not prohibited by law, a sum sufficient to carry out the provisions of this Act until the taxes collected hereunder shall be sufficient to pay such expenses."

In reply I beg to say that I do not feel that this office would be authorized to go over the many items listed and practically make an audit to determine from which funds each particular item should be paid. It is my opinion, however, that all items for the enforcement of Chapter 16,774 of 1935, which were paid from receipts under Chapter 15,884 prior to the date on which sufficient funds for operating expenses were received under Chapter 16,774, were properly so paid and such payments should stand, and that all items for enforcement of Chapter 16,774 of 1935 which were unpaid on date of receipt of sufficient funds for operating expenses under Chapter 16,774 of 1935, as well as all subsequent operating expenses under said Act, should be paid from funds received under Chapter 16,774.

The above opinion would also apply to salaries for the month of June mentioned in your letter.

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August 30, 1935.

INTOXICATING LIQUORS—CHAPTER 16,774, ACTS OF 1935; CHAPTER 15,884, ACTS OF 1933—APPROPRIATIONS MADE BY SAID ACTS—MANNER OF HANDLING

Dear Sir:

This acknowledges yours of the 28th instant regarding the above statutes. The specific question involved is the effect of Section 16 of Chapter 16,774, Acts of 1935, which provides as follows:

"There is hereby appropriated out of such unexpended funds as shall have been collected under Chapter 15,884, Acts of 1933, regulating the manufacture, sale and transportation of beverages not prohibited by law, a sum sufficient to carry out the provisions of this Act until the taxes collected hereunder shall be sufficient to pay such expenses."

The above Act was approved and became effective May 27, 1935, and provided by Section 9 thereof that the taxes imposed should be payable on and after thirty days after the effective date of the said Act. Therefore, beginning June 26, 1935, moneys began to be collected amply sufficient to pay the expenses of administering the Act.

You will also note that Section 19 (A) provides that the said Act of 1933 "shall not be repealed until it becomes inconsistent with this Act and the excise tax thereby imposed shall remain effective until the excise tax hereby imposed becomes effective and all taxes imposed by said law shall remain valid obligations to the State until paid."

You also advise that certain expenditures made by the State Beverage Department are being paid from funds collected under Chapter 15,884, Acts of 1933.

It is my opinion that the object and purpose of Section 16 was merely to provide against a possible contingency, to-wit: temporarily insufficient funds at the outset, and that by its express terms the same is operative only until the taxes collected under the 1933 Act are sufficient to pay the expenses of administering the Act. I, therefore, advise that there having been collected sufficient taxes from the 26th of June, when the taxes become effective, all items of enforcement should be paid for out of such funds, and that items prior thereto should have been paid from funds collected under the 1933 Act. I also advise that funds on hand resulting from the said Act of 1933 should be disbursed in accordance with the provisions thereof. In the event this has not been done and it is necessary for you to adjust the matter, I see no objection to your changing your records so that they may speak the truth and reflect what the law contemplated should be done.

APPROPRIATIONS

July 21, 1936.

APPROPRIATIONS—(1) MOTOR VEHICLE LICENSE DEPARTMENT
(2) AUTO THEFT DEPARTMENT*Dear Sir:*

In your letter of the 16th instant under these two subjects, you show the following:

- (a) Amount appropriated by the 1935 Appropriation Act for salaries, necessary and regular expenses, and repair and upkeep of building.
- (b) Anticipated revenues.
- (c) Anticipated disbursements.

I note in each instance that the estimated disbursements exceed the amounts appropriated in the biennial appropriation act, and that the departments' anticipated revenues exceed the estimate of disbursements. You ask as to each Department whether it is limited in its expenditures by the amounts set forth in the Appropriation Act of 1935, or whether it is entitled to apply towards its expenses such amount as the Department deems necessary within its anticipated revenue.

(1) Section 1304 of the 1934 Cumulative Supplement, Compiled General Laws of Florida, provides that:

"All moneys paid into the State treasury under the provisions of law relative to the licensing of motor vehicles, except such part as shall first be set aside by the State Motor Vehicle Commissioner and placed in the 'Motor Vehicle Expense Fund' to pay for number plates, postage, and transportation charges on same and the actual clerical work in operating expenses required under the law to administer provisions of this chapter shall be apportioned and appropriated as follows:"

Subsection (c) of Section 1304 provides:

"The sum of money which shall be set aside by the Motor Vehicle Commissioner for number plates, postage, actual clerical work and other necessary expenses, as provided for in this section, shall be placed to the credit of said 'Motor Vehicle Expense Fund,' which said fund is hereby appropriated and made available from time to time for the purpose for which it was created to be expended upon vouchers against the same approved by the State Motor Vehicle Commissioner and paid pursuant to warrants drawn by the Comptroller upon the State Treasury against the said 'Motor Vehicle Expense Fund' hereinbefore mentioned."

This constitutes a continuing appropriation of such reasonable sum as shall be set aside by the Motor Vehicle Commissioner for number plates, postage, actual clerical work, and other necessary expenses of said

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Department, and cannot be amended or limited directly or indirectly by provisions of the general Biennial Appropriation Act.

(2) Section 3985 of the Compiled General Laws of Florida, 1927, provides that all moneys received for title registration and the issuance of certificates of title to motor vehicles, shall be set aside and shall be known as the "Auto Theft Fund," and shall be held and retained in the State Treasury as a separate fund, and shall be used first to meet the necessary expenses incurred in the performance of duties required by said Act, and in the enforcement of the motor Vehicle and traffic laws of the State.

It is then provided that if, at the end of any fiscal year, there be a balance in said fund which has not been previously obligated, said unobligated balance shall be credited to the State Road Fund for the maintenance of State roads under the supervision of the State Road Department. This constitutes a continuing appropriation of so much of said fund as shall be necessary for paying all expenses incurred incident to the enforcement of said law, which cannot be amended or limited by provisions of the general Biennial Appropriation Act.

This holding is in line with my former opinions on similar questions.

December 6, 1935.

APPROPRIATION FOR FREE TEXT BOOKS UNDER CHAPTER 16,772,
ACTS OF 1935, IS IN ADDITION TO APPROPRIATION UNDER
SECTION 18, CHAPTER 10,254, ACTS OF 1925, BEING
SECTION 889, C. G. L.—SCHOOLS

Dear Sir:

I have your letter requesting my opinion upon the following question:

Is the appropriation of \$500,000.00 for the purchase of free text books (State Department of Public Instruction) under Chapter 16,772, Laws of Florida, Acts of 1935, payable from the General Revenue Fund of the State and is it in addition to the amount appropriated for the purchase of free text books under Section 18 of Chapter 10,254, Laws of Florida, Acts of 1925, being Section 889, Compiled General Laws of Florida, 1927?

Chapter 10,254, *supra*, provided for the State to furnish free text books for use in the first six grades in the public free schools of the State and levied a tax of not to exceed three-fourths of one mill on all taxable property in the State for the purchase of these books. This Chapter was amended by Chapter 17,251, Laws of Florida, Acts of 1935, to provide for the State furnishing free text books in the public free high schools and elementary schools of the State but the section levying the three-fourths of one mill tax was not amended. The General Appropria-

APPROPRIATIONS

tion Bill, Chapter 16,772, (page 14) under the State Department of Public Instruction contained an item of "For Free Text Books, \$500,000.00. This Act did not repeal Section 18, Chapter 10,254, supra.

It is my opinion that the \$500,000.00 appropriated for free text books under Chapter 16,772, supra, is payable from the General Revenue Fund of the State and is in addition to the appropriation of the proceeds of the tax levy of three-fourths of one mill made by Section 18 of Chapter 10,254 supra.

September 17, 1936.

APPROPRIATIONS—CHAPTER 17270—WHAT CONSTITUTES
UNEXPENDED BALANCE—STATE EMPLOY-
MENT BOARD

Dear Sir:

In my opinion to Honorable _____, State Comptroller, under date of July 30, 1936, I stated the following:

"It is my opinion that Chapters 17028 and 17270 are susceptible to a different construction from that applicable to the above designated chapters, and that no part of the annual appropriation in Chapters 17028 and 17270 can be carried over from one year to the next. This is so because the work for which the appropriation was made in each of these acts is continuing in character, and the appropriation in each act is likewise continuing, with no provision limiting the time same shall run."

"The statement which I made in said opinion and which is hereinabove set forth applies, of course, to an "unexpended balance." If the expenditure of funds has been properly contracted for during the fiscal year the mere fact that the funds have not actually been expended does not render it an "unexpended balance."

In your letter of September 10 you state the following:

"On June 5, 1936, there was submitted for the approval of the United States Employment Service a 1936-1937 budget of the Florida State Employment Service. This budget was made on the basis of the 1936-1937 annual state appropriation of \$35,880, together with the unexpended remainder of the 1935-1936 budget amounting to \$10,637.53. This budget was reviewed and approved by the Director of the United States Employment Service and it became the basis for an agreement entered into on June 25, 1936, by the Florida State Employment Service and the United States Employment Service. This agreement, which sets forth certain functions to be performed by the respective parties there-

APPROPRIATIONS

to, was signed by Colonel ———, Chairman of the Florida State Employment Board, by me as State Director of the Florida State Employment Service and by Mr. ———, Director of the United States Employment Service.

"It is apparent that since the budget and agreement were approved and signed in good faith by the United States Employment Service the funds to be expended from the Treasury of the State of Florida for the use of the Florida State Employment Service were, on June 25, 1936, obligated since it was on this basis that the United States Employment Service agreed to provide an equal amount of funds out of the Federal Treasury."

In view of the facts which you state, it is my opinion that the funds you mention were not an "unexpended balance" but were funds definitely allocated for expenditures before the end of the fiscal year.

May 1, 1936.

APPROPRIATIONS—FORESTRY DEPARTMENT

Dear Sir:

In your letter of April 30, 1936, you ask whether in my opinion it is possible for you to use during the second year of the biennium funds appropriated and allocated for use during the first year of the biennium under Senate Bill No. 561, Chapter 17027, Acts of 1935.

In an Advisory Opinion to the Governor, 83 So. 672, the Supreme Court of Florida held that expenses incurred during the year 1920 could not lawfully be paid from the appropriation made for the year ending December 31, 1919, under Chapter 7887, Acts of 1919. That opinion seems to settle the question that expenses incurred during the second year of the biennium cannot be paid from funds appropriated for use during the first year of the biennium.

September 3, 1936.

APPROPRIATIONS—STATE BOARD OF HEALTH—"NECESSARY AND REGULAR EXPENSES" AS INCLUDING PART COST OF CONSTRUCTION OF LABORATORY

Dear Sir:

This is in reply to your letter of September 1, in which you request my opinion as to whether or not a part or all of the balance carried over from the 1935-1936 appropriation designated for "necessary and regular expenses" can be used for an extension to the laboratory building. It is

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my opinion that such funds may legally be used for this purpose, inasmuch as the maintenance of adequate laboratory facilities is a "necessary" expense of the State Board of Health.

May 1, 1936.

APPROPRIATIONS—CHAPTER 12284 OF 1927—STATE TUBERCULOSIS SANITARIUM

Dear Sir:

I have for acknowledgment your letter dated May 1st, requesting my opinion as to whether the appropriation made by Section 7 of Chapter 12284, Laws of Florida, Acts of 1927, continues as an effective appropriation for the purposes designated, and whether the same may be used in or towards the construction or erection of a State Tuberculosis Sanitarium.

It is my opinion that the appropriation made by Section 7 of Chapter 12284, still is effective for the purpose for which said appropriation was made, to the extent, if any, that same has not been used, and that it may be used in or towards the construction or erection of a State Tuberculosis Sanitarium as in said Act authorized and provided.

It is my opinion that the Legislature in the enactment of Chapter 12284 intended the appropriation made by Section 7 to continue until used for the purpose or purposes therein stated, and that one of such purposes is the erection and construction of the State Tuberculosis Sanitarium referred to in said Act. The Act demonstrates a legislative intent to vest in the State Tuberculosis Board the discretion of spending the appropriation for any or all of the purposes therein stated.

August 9, 1935.

APPROPRIATIONS—MILK CONTROL BOARD

Dear Sir:

I am in receipt of your letter of the 7th instant, referring me to Section 3 of Senate Bill No. 444, Chapter 17103, of 1935, creating a Milk Control Board and providing for salaries and expense accounts. You call attention to the Act providing a compensation not to exceed \$3600.00 per annum to the Director. You also call attention to the provision for expense accounts of members of the Milk Control Board, except the Director. You make inquiry if the Director of the Milk Control Board would be authorized to draw traveling and other expenses from the General Inspection Fund or any other fund of the State of Florida.

APPROPRIATIONS

In reply I beg to say it has been the custom of this office not to advise as to the duties and powers of any officer except upon request of such officer. However, I may call to your attention the fact that while Senate Bill No. 444 makes no specific provision for the payment of traveling and other expenses of the Director of the Milk Control Board, it will be found that provisions of said Act contemplate that such Director shall do more or less traveling in the performance of his duties. Your attention is further called to the General Appropriation Act of 1935, House Bill No. 1256, Chapter 16772, making an appropriation for necessary and regular expenses for the Milk Inspection Division.

July 30, 1936.

APPROPRIATIONS—CHAPTERS 17,275, 17,470, 17,068, 17,028 AND
17,270—CARRYING FORWARD UNEXPENDED
BALANCES—STATE PLANNING BOARD

Dear Sir:

I am in receipt of your letter of July 17, referring to the appropriation of the State Planning Board, under Chapter 17,275, Laws of Florida, Acts of 1935, in which you make the following inquiries:

1. "May I carry forward the remainder of \$520.10 from the first year and make it available for expenditures in the second year, or does it lapse as of June 30, 1936?"
2. "If the State Planning Board has expended, or contracted to expend, any part or all of the balance of their appropriation shown as undisbursed on June 30, 1936, may I, upon their proper showing that any of this amount has been expended, extend this part of their appropriation to cover amounts expended prior to June 30, 1936?"

Section 12 of said Act making an appropriation for the above Board reads as follows:

"There is hereby appropriated out of any funds in the State Treasury the sum of \$25,000.00 annually for the next two years to carry on the work of the board."

It is my opinion that your first inquiry hereinabove stated should be answered in the affirmative. The word "annually" is not to be construed as dividing the period of the appropriation into two separate and distinct years. The word "annually" designates the time when the appropriation becomes available for the purposes outlined in the statute but does not describe any definite period during which the appropriation must be used. In this respect the situation here presented is essentially different from that considered by the Supreme Court of Florida in its

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advisory opinion to the Governor reported in 83 Southern 672. The statute there considered by the Supreme Court specified different sums for periods of time expressly stated.

The case of *Green vs. Kentucky Illiteracy Commission*, 214 S. W. 436, is pertinent in connection with the problem with which we are confronted. The provision of a Kentucky statute making the appropriation read as follows:

"Be it enacted by the General Assembly of the commonwealth of Kentucky:

"Section 1. That there be and is hereby appropriated to the Kentucky Illiteracy Commission the sum of twenty-five thousand dollars annually, until June 30, 1920, and on or before June 30, 1918, June 30, 1919, and June 30, 1920, the auditor of the commonwealth is directed to draw his warrants for said sum above annually appropriated, upon vouchers or warrants signed by the chairman and secretary of said commission."

The Kentucky Court said in part:

"The only remaining question is whether, by directing the payments to be made out of the revenues and charged to the state's expenses in three separate years, the commission as an arm of the state was limited in its use of each annual installment of the appropriation to the fiscal year within which it was payable. To sustain this contention, we are cited by appellant to two cases, in the first of which, an "Opinion of the Judges," reported in 5 Neb. 566, it is stated as the reason for holding an unexpended portion of an annual allowance lapsed, "For by the very terms of the act only so much as is necessary for a particular period of time is appropriated," while in the other case cited (State v. Hallock, 20 Nev. 73, 15 Pac. 472) it is stated as a reason for a similar construction of an act, where express terms of limitation of the period of use were absent, that such had been the uniform construction placed upon such laws by the Legislature and fiscal officers. As there is no provision of the act before us appropriating only so much as was necessary for a particular period, nor any question of contemporaneous construction presented, neither of the cases cited is in point.

"(3) Upon the other hand, we find in the fact that the Legislature appropriated a certain fixed sum for the one purpose of eradicating or attempting to eradicate from the state illiteracy among adults within a limited time, and gave to the commission blanket authority to expend such parts thereof, "for the employment of county field agents, clerical help and other legitimate expenses as may, in the judgment and discretion of the commission be necessary in the efficient and economic meth-

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ods of teaching illiterate men and women," and authorized it to carry on this work into as many of the counties of the commonwealth "as it may deem proper for the purposes of furthering its work," an indication that the Legislature did not intend to designate or control either the expenditure or the time of the expenditure by the commission of the several sums set apart for its use in an effort to accomplish a single great work within a fixed time."

While the Kentucky case above referred to did not present precisely the same factual situation as we are dealing with, it did, however, consider the fundamental problems which is decisive of the matter before us, which is clearly indicated by the portions of the opinion herein set forth.

In the case of Maryland Agricultural College vs. Atkinson, reported in 62 Atlantic 1035, it appeared that the Legislature of Maryland had made an appropriation of "six thousand dollars per annum" for the formation and support of farmers' institutes and further provided for the time when such amounts should be made available for expenditure. It seems that the full six thousand dollars was not made available or expended during a certain fiscal year and the question arose as to whether or not the unexpended balance was still available for use for the purposes outlined in the Act. The Court said in its opinion:

"It is clear that the Legislature intended that the college should receive each year from the state treasury, out of any funds not otherwise appropriated, the several sums mentioned for the purposes specified in the act, and it indicated the time in which it became the duty of the financial officers of the state to see to the payment. To construe these directions as to the time of payment to be a limitation or a denial of the power to pay after the close of the fiscal year would be to frustrate the leading and evident purpose of the acts under consideration, as manifested by their language, and as gathered from the foundation, the history, and the relation and settled policy of the state respecting this college."

The second inquiry outlined above must also be answered in the affirmative, insofar as it is necessary to answer said inquiry, in view of what I have said before.

Pursuant to your request I have also considered the following acts in connection with the above mentioned act:

Chapter 17,470, relating to Agricultural Extension Service,
Screw Worm Control;

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Chapter 17,068, relating to Purchase and Distribution of Insulin;

Chapter 17,028, relating to Forestry Department, University of Florida;

Chapter 17,270, relating to State Employment Board.

Chapter 17470 makes an appropriation of \$50,000 annually for two years to be used in connection with an appropriation made by the Federal Government in screw worm control work, and it is my opinion that the Legislature intended to make the entire sum of 100,000 available for that purpose, and that if less than \$50,000 be spent during the first year, the balance should be carried over for use during the second year if needed for the purposes for which the appropriation was made.

Chapter 17068 authorizes and also requires the State Board of Health of Florida to purchase and distribute insulin, and for that purpose appropriates the sum of \$7,500 annually for two years. It is my opinion from the language used that the Legislature intended that \$15,000 worth of insulin should be purchased and distributed, and that the failure of the Board during the first year of the biennium to purchase \$7,500 worth does not defeat the intent and purpose of the Act, and that any amount not so used during the first year of the biennium may and should be carried over into the second year.

It is my opinion that Chapters 17028 and 17270 are susceptible to a different construction from that applicable to the above designated chapters, and that no part of the annual appropriation in Chapters 17028 and 17270 can be carried over from one year to the next. This is so because the work for which the appropriation was made in each of these acts is continuing in character, and the appropriation in each act is likewise continuing, and with no provision limiting the time same shall run.

April 17, 1936.

APPROPRIATIONS—STATE PRISON FARM

Dear Sir:

I have your letter of the 15th inst., calling attention to the General Appropriation Act of 1935, Chapter 16,772, which contains an item of \$389,563.00 for necessary and regular expenses of the State Prison Farm. You also call attention to the receipts by the State Prison Farm for motor vehicle tags made and furnished to the Motor Vehicle Department as well as receipts for supplies furnished the State Road Department and other State institutions.

You make inquiry if these and similar receipts may be credited to the necessary and regular expense account of the State Prison Farm and

APPROPRIATIONS

used for payments for such expenses in addition to the above mentioned appropriation of \$389,563.00 for such purposes.

It is my understanding that the cost of the production of these supplies, including the materials therefor, is paid from the above general appropriation for expenses and that unless the receipts for supplies furnished at practical cost to the other State institutions and departments can be credited back the said account will thereby be diminished and to that extent lost to the general purposes of the State Prison Farm.

The report of the State Budget Commission to the 1935 Legislature shows a separate listing of incidental receipts in addition to appropriation recommended, which indicates that it was the purpose of the Commission that such receipts should be available and used for the Prison Farm, and I think we may take it for granted that the Legislature took notice thereof and fixed the amount of the appropriation with the understanding that such receipts would accrue to the Prison Farm expense account in addition to the amount appropriated.

In view of the above it is my opinion that such receipts may be credited to the above expense appropriations for the State Prison Farm and used for expenses of said institution.

October 2, 1935.

APPROPRIATIONS—JUDAH P. BENJAMIN MEMORIAL—
GAMBLE MANSION

Dear Sir:

I have your letter of the 25th ult., with attached file relating to insurance on the Gamble Mansion and making inquiry if the appropriation is broad enough to cover repairs, upkeep and insurance.

Chapter 12,477, Laws of Florida, Acts of 1927, is an Act making an appropriation for completing the *restoration* of Gamble Mansion. In my opinion this Act should be construed in connection with Chapter 10,293, Laws of Florida, Acts of 1925, authorizing the State of Florida to accept Gamble Mansion as a gift. You will note that the title and preamble to this Act makes mention of *preservation* as well as *restoration* of said property. Construing the said two Acts together it would appear that any balance on hand to the credit of the Judah P. Benjamin Memorial would be available for repairs, upkeep and insurance.

BIENNIAL REPORT OF THE ATTORNEY GENERAL 413
APPROPRIATIONS

July 18, 1935.

APPROPRIATIONS, INVOICES OF PRIOR BIENNIUM

Dear Sir:

I have your letter of the 17th instant, in which you advise invoices aggregating approximately \$4500.00 covering purchases made during the last fiscal year have accumulated since the general printing and advertising appropriation for the last biennium has been exhausted. You make inquiry if the aforementioned invoices may be paid from the current appropriation.

In reply I beg to say that if such invoices cover the printing of Supreme Court Reports, briefs, departmental reports or similar printing required by law, or the purchase of law books or other necessary office material purchased toward the end of the last biennium in contemplation of the same being paid from the current appropriation, it is my opinion that said invoices may be paid from the current appropriation even though the same may antedate by a few days the close of the last biennium.

August 5, 1935.

APPROPRIATIONS, CHAPTER 6432 OF 1913, AGRICULTURAL
COLLEGE FUND

Dear Sir:

This refers to your favor of August 3.

The picture, as I get it, is that the Agricultural College Fund bonds are of the par value of \$153,800.00, that under the Morrill Act, passed by Congress in 1862, the terms which have been accepted by the State of Florida, it is required that not less than 5 per cent. interest on this amount shall be earned, and in the event it is not earned for the benefit of the Agricultural College of Florida, that then, to the extent that this interest shall be diminished or lost, the State of Florida shall make appropriation and pay such diminished amount, in order that the total five per cent. may be paid for the purposes of the act at all times. It appears that the investments made for the benefit of the Agricultural College Fund have not been such as to earn a full five per-cent. in recent years, and that the Legislature of the State of Florida recognized this fact in 1913 and enacted Chapter 6432, Laws of Florida, Acts of 1913.

This Chapter of our laws makes an annual appropriation of the sum of \$2,716.00 for the use of the University of Florida, and provides that the State Comptroller, on the first day of July of each year, shall transfer this amount to the Agricultural College Fund.

APPROPRIATIONS

This, in my opinion, is a continuing appropriation, and there is a continuing duty on the Comptroller to transfer from the General Fund of the State of Florida, on the first day of July of each year to the Agricultural College Fund, the sum of \$2,716.00.

For the last five years this has not been done, and, as I understand it, it is the duty of the Comptroller to transfer out of the General Fund of the State of Florida to the Agricultural College Fund for each of such years for which said transfer has not been made, the sum of \$2,716.00.

As I determine the matter, it seems that if this is done for each of the last five years, that this will make your fund, according to your figures, intact, and that you will have no trouble then in having the Federal Government make proper certification of the funds to be used under the Morrill Act.

I have explained this matter to the Honorable J. M. Lee, State Comptroller, and also to the State Board of Education, and the Board today passed a motion directing the Comptroller to make such transfer.

August 24, 1935.

APPROPRIATIONS, USE OF WORDS "WHEN AVAILABLE"

Dear Sir:

I have your letter of the 22nd inst., in which you ask an opinion of this office as to the effect of the clause "when available" in two items which appear in the General Appropriations Bill, which I quote:

"There shall be repaid to the permanent building fund borrowed by the General Fund, when available, the necessary amount to tear down and salvage and rebuild the condemned Agricultural Experiment Station Building and to furnish the Student Union Building."

and

"There shall be repaid to the permanent building fund borrowed by the general fund, when available, the necessary amount to tear down and salvage and rebuild the condemned North Wing of the Administration Building and to furnish the Education Building."

It is my opinion that the phrase "when available" was used by the Legislature to restrict the repayment out of the General Revenue Fund the above items to any surplus or excess remaining in the General Revenue Fund after the payment of all non-restricted appropriations; i. e., that the above appropriations should be repaid when there are sufficient funds out of which they might be paid so as not to impair payment of unrestricted appropriations out of the General Revenue Fund for the biennium covered by the General Appropriations Bill.

APPROPRIATIONS

August 13, 1935.

APPROPRIATIONS, STORMS, ETC., UNIVERSITY OF FLORIDA

Dear Sir:

The question has arisen as to whether or not an item for the general appropriation bill for the University of Florida, which reads as follows:

"Special appropriation to supplement Federal funds in furnishing detailed advanced information on storms, frosts and freezes for the benefit of farming, growing, fishing and shipping interests, \$10,000.00."

is a part of the total appropriation set forth under the Agricultural Experiment Station, the said total appropriation being \$374,940.00.

It is my opinion that this special appropriation to supplement Federal funds is in addition to the \$374,940.00, and is only payable for the purposes of supplementing Federal funds that may be furnished for the particular purposes set forth.

This special appropriation was made by the Legislature as a special appropriation.—In other words, it was not recommended in the budget and was not a part of the total appropriation for consideration before the Legislature, but was added by the Legislature as a special item to cover the particular matters of storms, frosts, freezes, etc.

Of course, it will be necessary for you to have furnished your office information as to the Federal funds, as they are allotted to the University of Florida for these given purposes.

July 17, 1935.

APPROPRIATIONS—H. B. NO. 1256, CHAPTER 16772, AND S. B. NO. 51,
CHAPTER 17269, OF 1935, CENSUS*Dear Sir:*

I have your letter of the 11th instant referring to Senate Bill No. 51, Laws of Florida, Acts of 1935, providing for the taking of a Census of the State of Florida and making an appropriation therefor in the sum of \$100,000.00, appropriated out of any money not otherwise appropriated. You also refer to House Bill No. 1256, which is the General Appropriation Act of 1935, making an appropriation of \$32,000.00 for completion of the 1935 Census and appearing under the following caption:

"THE FOLLOWING FROM SPECIAL FUNDS: OFFICE OF
COMMISSIONER OF AGRICULTURE."

You make inquiry if the first \$100,000.00, above mentioned, should be paid from the General Revenue Fund of the State and if the last men-

APPROPRIATIONS

tioned \$32,000.00 should be paid from Special Funds in the office of the Commissioner of Agriculture.

In reply I beg to say that under the provisions of Senate Bill No. 51 and House Bill No. 1256 it is my opinion that the \$100,000.00 should be paid from the General Revenue Fund and that the \$32,000.00 appropriated in the General Appropriation Act, House Bill No. 1256, under the above quoted caption, should be paid from Special Funds in the office of the Commissioner of Agriculture.

August 3, 1935.

APPROPRIATIONS, SCHOOLS, CHAPTER 17247 OF 1935

Dear Sir:

I acknowledge receipt of your request of the 31st ult., for an opinion as to your duties under Senate Bill Number 370, Chapter 17247, Laws of Florida, Acts of 1935, among other things providing for an appropriation to increase the County School Fund and regulating the expenditures thereof.

In reply, I beg to state that after an examination of the Act referred to, I am of the opinion that the money thereby appropriated to the County School Fund can lawfully be paid out of the General Revenue Fund only. Section 2 of this Act so provides.

Section 5 of the Act makes the appropriation to the County School Fund mentioned in Section 2 of equal dignity and on a parity with all other appropriations made by the Legislature except those specifically excepted in said Section 5, and provides that if there be insufficient funds, the appropriation to the County School Fund shall be diminished in the same proportion that other appropriations made by the Legislature, not specifically excepted therein, are diminished by reason of insufficiency of funds. This means, of course, insufficiency of funds in the General Revenue Fund, from which the appropriations are made.

In other words, it would be your duty to make payments from the General Revenue Fund of all the excepted appropriations in full, and then, if there be an insufficiency of funds remaining, to pay all other appropriations out of the General Revenue Fund, including the amounts appropriated therefrom to the County School Fund by Section 2, as far as such funds would extend pro-rata, so that each of such appropriations would share proportionately in the remaining funds.

APPROPRIATIONS

August 2, 1935.

APPROPRIATIONS, PRINTING

Dear Sir:

This refers to your favor of August first, in which you make inquiry as to payment of two invoices for printing the constitutional amendments, in the amounts of \$18.75 and \$260.00.

These are legitimate expenses authorized by law, and inasmuch as the bills did not come in until now, it is my opinion that you should pay them. It is my opinion that you are authorized to pay them out of the appropriation for general printing and advertising for this biennium.

August 2, 1935.

APPROPRIATIONS—RELIEF ACT FOR MRS. ROSE TYSON,
CHAPTER 17,227 OF 1935*Dear Sir:*

I am in receipt of your letter of the 30th ultimo with a certified copy of Senate Bill No. 205, Chapter 17,227 of 1935, which is the Relief Act for Mrs. Rose Tyson. The said Act makes an appropriation of \$3,000.00, payable one-half as soon as the bill becomes a law and one-half in 12 months. The Act provides that the said sum is appropriated out of the State Treasury from any funds not otherwise appropriated. You call attention to the relief being granted by reason of the death of her husband in the performance of his duties as an employee of the State Road Department. You make inquiry if this claim can be paid from the funds of the State Road Department and if not should this claim be paid from the General Revenue Fund before same has accumulated an amount in excess of that required for administrative and educational purposes appropriated from such fund.

In reply I beg to say under the provisions of said Act the amount appropriated therein could not be paid from the funds of the State Road Department but must be paid from the General Revenue Fund, and it is my opinion that the same should be paid from said fund the same as other amounts appropriated to be paid therefrom.

August 1, 1935.

APPROPRIATIONS, INVOICES OF PRIOR BIENNIUM

Dear Sir:

I am in receipt of your letter of the 26th instant, advising that invoices covering purchases made during the last biennium have been sub-

APPROPRIATIONS

mitted to your office with the request that the same be paid out of the appropriation for the current biennium covering several different funds.

In reply I beg to say that if such purchases were authorized by law and made to the end of the last biennium in contemplation of the same being paid from the current appropriation, it is my opinion that said invoices may be paid from the current appropriation even though the same may antedate the close of the last biennium.

August 1, 1935.

APPROPRIATIONS, STATE PRISON FARM

Dear Sir:

I am in receipt of your letter of the 26th instant referring to Chapter 16,772, Laws of Florida, Acts of 1935, which is the General Appropriation Act. You call attention to the fact that the appropriation for the State Prison Farm in the sum of \$537,163.00 is listed under the special heading, reading as follows:

"AND THE FOLLOWING FROM SPECIAL MILLAGE"

You further state that the millage for the State Prison Farm set by the Governor for the year 1935 is $\frac{3}{8}$ of a mill. This is the millage authorized by Section 8615, Compiled General Laws of Florida, 1927. You further state that based on last year's collections $\frac{3}{8}$ of a mill would produce only \$150,000.00 to pay the above mentioned appropriation of \$537,163.00. You make inquiry if the appropriation for the State Prison Farm is limited to the revenue which may be received as the result of the $\frac{3}{8}$ of a mill levy, or if the sum of \$537,163.00 appropriated in said Act is to be paid from the General Revenue Fund of the State in addition to the funds received on account of said $\frac{3}{8}$ of a mill levy.

In reply I beg to say it is my opinion the primary purpose of the General Appropriation Act, Chapter 16,772, Acts of 1935, was to make an appropriation for each Department of the State and fix a maximum amount therefor. The insertion of the heading "AND THE FOLLOWING FROM SPECIAL FUNDS" appears to be incidental and secondary to the primary purpose above mentioned. It is, therefore, my opinion that the amount appropriated in Chapter 16,772, Acts of 1935, to the State Prison Farm should be paid from the funds received from the $\frac{3}{8}$ of a mill levy therefor to the extent of such funds, and that any balance of said appropriation may be paid from the General Revenue Fund.

In this connection I may say I am in receipt of a similar letter from Dr. ———, State Veterinarian, with reference to the 1935 appropriation to the State Livestock Sanitary Board. I beg to advise that the above opinion would also apply to the State Livestock Sanitary Board.

APPROPRIATIONS

July 10, 1935.

APPROPRIATION UNDER CHAPTER 11,902, ACTS OF 1927,
IS A CONTINUING ONE*Dear Sir:*

I have your letter in which you request me to advise you whether or not the appropriation made by Chapter 11,902, Laws of Florida, Acts of 1927, is a continuing one.

Chapter 11,902, *supra*, is "An Act to provide for the appointment of a commission to acquire by gift, purchase or otherwise for the State of Florida a parcel of land having as its center the intersection of the Guide Meridian and the Base Parallel of Florida and to beautify the same and to make appropriation therefor."

Section 1 of the Act requires the Governor to appoint a commission composed of three citizens whose duty it shall be to acquire a parcel of land one-half acre square having for its center the intersection of the Guide Meridian and the Base Parallel of Florida. Section 2 authorizes the committee to develop the land so purchased into a park. Section 3 appropriates the sum of \$1000 to carry out the provisions of the Act.

It is my opinion that the appropriation made by Section 3 of the Act is a continuing one and may be expended at any time by the committee appointed under the Act.

June 26, 1935.

SALARIES—APPROPRIATION ACTS—LEGISLATIVE EXPENSES

Dear Sir:

I have your letter of this date advising that the total expenses of the 1935 Legislature will approximate \$275,000.00. You call attention to Chapter 15,858, Acts of 1933, which provides an appropriation of \$225,000.00 for legislative expenses of the biennium, beginning July 1, 1933, and ending June 30, 1935.

In reply to your inquiry I beg to say in my opinion the deficit in such appropriation may be taken care of under Senate Bill No. 945, Chapter 17091, Laws of Florida, Acts of 1935, approved June 4, 1935. You will note that said Act fixes the pay of Legislators and their attaches as well as legislative expenses. Your attention is further called to the following language in Section 6 of said Act:

"So much as may be necessary to carry out the provisions of this Act is hereby appropriated out of the General Revenue Fund."

You will note also that Section 7 provides for the Act to take effect upon its becoming a law.

APPROPRIATIONS

February 13, 1935.

GENERAL APPROPRIATION ACT—1933—CHAPTER 15858, ACTS OF
1933—JUDICIAL DEPARTMENT*Dear Sir:*

This acknowledges receipt of yours of the 13th instant.

You advise that the necessary and regular expense appropriation of \$200,000 for the Judicial Department, as contained in the above mentioned Act, will be short by approximately \$105,000 for this fiscal year on the basis of last year's expenditures.

You ask whether or not under the advisory opinion to the Governor under date of April 14, 1934, as reported in 154 So. 154, you are authorized to treat so much of the salary appropriation of \$250,000 for the Judicial Department as is necessary to pay the salaries of Circuit Judges and State Attorneys as a sum not required for such purposes, which sum may thus be applied to the necessary and regular expense of the Judicial Department.

Under the said Advisory Opinion to the Governor, it was held that under Article 16, Section 3, of the Constitution, the amounts of salaries fixed by law for State officers is made disburseable by way of a constitutional appropriation out of any available moneys in the State Treasury in the general State funds; and the same are payable monthly upon the officers' requisitions; and such officer is entitled to payment of his salary as fixed by law, irrespective of the amount named or specified in the general appropriation act of the Legislature.

In the Advisory Opinion the Governor was authorized to countersign warrant for the payment of salaries of circuit judges, State Attorneys, and official Court reporters, irrespective of any amount set forth in Chapter 15858, Acts of 1933—the General Appropriation Act.

Under this Advisory Opinion it is my opinion that the payment of the salaries of these officials may be made from the general funds, and you may properly treat the sums so paid as not being chargeable against the said appropriation; and that, therefore, the said salary appropriation of \$250,000 may be considered as relieved to that extent of charges against it.

Under Section 2 of the said Appropriation Act of 1933, it is specifically provided that any sum or sums appropriated for salaries, if not required for such purposes, may be applied to other necessary and regular expenses of the Department to which they are appropriated.

I therefore give it as my opinion that the sums appropriated by the Legislature for these salaries, not being required, may be transferred to the necessary and regular expense account, and disbursed accordingly.

APPROPRIATIONS

July 6, 1935.

APPROPRIATIONS—WORLD WAR VETERANS, EDUCATIONAL AID
TO CHILDREN*Dear Sir:*

Replying to your letter of the 3rd inst., with reference to House Bill No. 210, Chapter 17474, Acts of 1935, which makes an appropriation for the education of children of parents who died from injuries sustained or diseases contracted in the military, naval, marine or nursing corps service of the United States between April 6, 1917, and July 2, 1921, both inclusive, I beg to state that the Act referred to provides that the sums of money therein appropriated shall be paid out and the vouchers signed by the governing authority of the institution which such child attends and that the "Board shall determine the eligibility for the benefits thereof."

The Act provides that the training be given in a state educational institution. The Board of Control, under Section 778, Compiled General Laws of Florida, is given management and control of the several state educational institutions and under the terms of House Bill No. 210 is therefore vested with the duty of determining the eligibility for the benefits and administering the funds provided by the terms of House Bill No. 210.

May 3, 1935.

APPROPRIATION—GASOLINE TAX

Dear Sir:

This is in response to your oral inquiry today concerning the following:

Would the enactment of a statute diverting the one cent of the Second Gasoline Tax, now apportioned to the credit of the several counties on the basis of population, pursuant to Chapter 15659, Laws of Florida, Acts of 1931, to the support of the free public schools in any manner impair the validity or constitutionality of the remaining two cents of the said Second Gasoline Tax, to-wit, that apportioned on the basis of area, and that apportioned on the basis of contribution made to the State Highway System.

It is my opinion that such statute would in no manner affect the validity or constitutionality of the remaining two cents gasoline tax and that, if such statute is passed merely affecting the one cent now apportioned on the basis of population, the remaining two cents will be, and constitutionally may be, apportioned in the same manner as provided by the said 1931 law.

APPROPRIATIONS

June 13, 1935.

APPROPRIATIONS—ADJUTANT GENERAL, SALARY

Dear Sir:

In your letter of the 8th instant you ask whether in preparing the budget for your Department to conform to the new Appropriation Bill, you may receive the benefit of the salary increase.

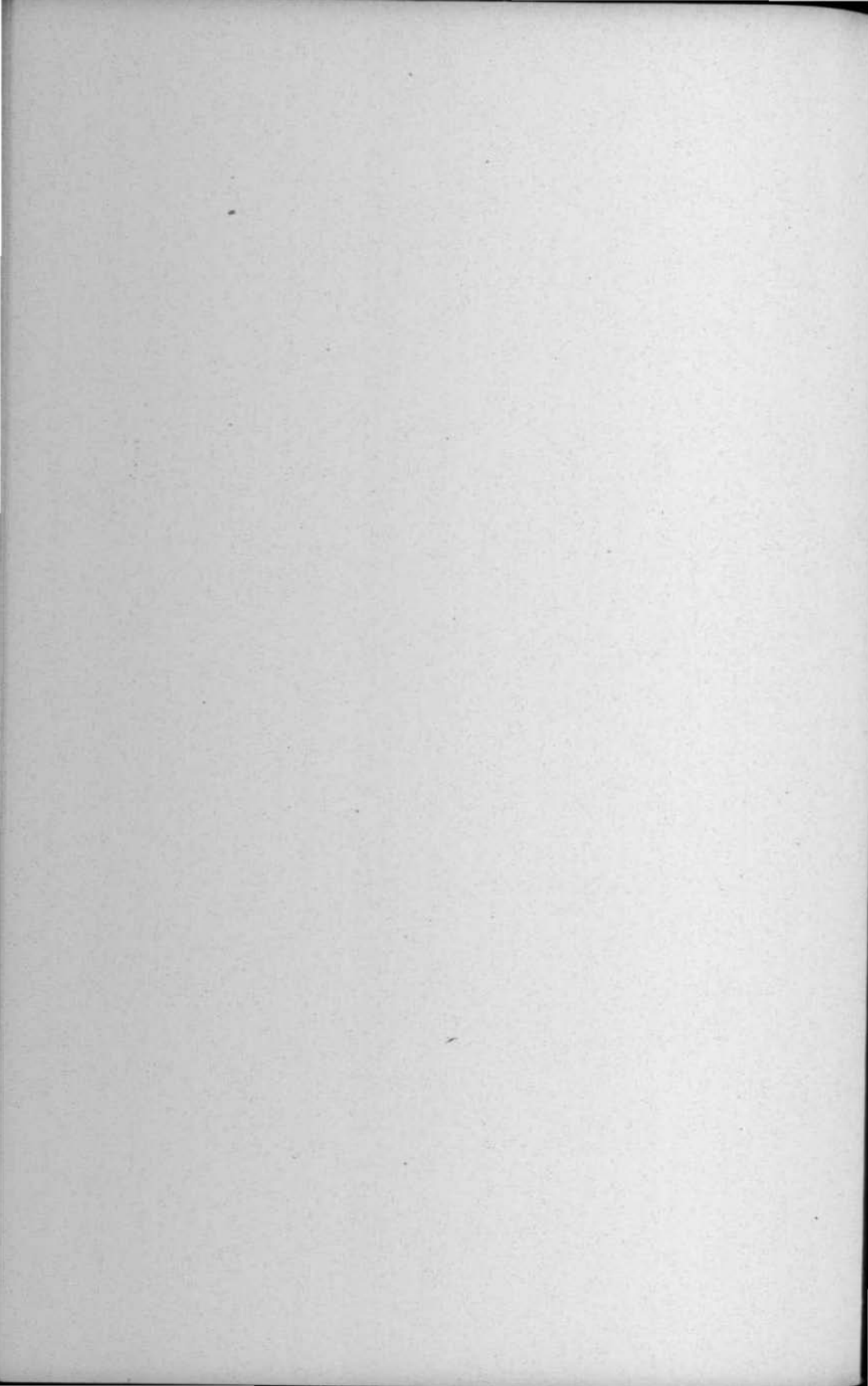
The Legislature of 1933 by Chapter 15859 fixed the annual salary of the Adjutant General at \$3,600. This is a continuing Act until changed by the Legislature, and the amount fixed therein cannot be changed by the General Appropriation Act in the absence of a definite statement to that effect.

The Biennial Appropriation Act of 1935 merely fixed one sum to cover all salaries of your Department, without stating the salary of any officer or employee. I am sorry to have to advise, therefore, that your salary will be that fixed by the Salary Act of 1933.

CHAPTER VIII

SCHOOLS

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SCHOOLS

SECTION 1

TEACHERS

July 15, 1936.

SCHOOL PENSIONS—CHAPTER 14,782 OF 1931

Dear Sir:

I am in receipt of your letter of the 3rd instant making inquiry as to the payment of any balance to the heirs of a pensioner under Chapter 14,782, Laws of Florida, Acts of 1931, providing a pension for school teachers under certain conditions when such pensioner dies during the month following the last monthly payment to such pensioner.

In reply I beg to say that the said Pension Act does not make provision for payment to any one of any balance due a pensioner under said Act. It is, therefore, my opinion than any balance due deceased pensioner under said Act, since the last monthly payment, has lapsed and no further sums are payable to any one.

May 16, 1935.

SCHOOLS, NOMINATION OF TEACHERS

Dear Sir:

In your letter of the 16th instant you ask

"Will you please advise me on what grounds, if any, the Board of Public Instruction of the Counties of Florida may reject nomination of teachers made by local trustees?"

This question was fully considered in the case of *State ex rel Pittman et al vs. Baker et al*, decided by the Supreme Court of Florida February 5, 1934, and reported in 113 Fla. 865, 152 So. 682. The Court recites that the Legislature has seen fit to safeguard the school system and the appointment of teachers with rigid impositions. That exceptional requirements are imposed on candidates to teach before they are eligible to pursue their profession. That in addition to moral, educational, and other qualifications, they must demonstrate ability to teach, discipline, and guide the youth, if they would continue in their positions.

The Court observes that Sections 10 and 17 of Article XII of the Constitution provide for the creation of special tax school districts and the election biennially of three trustees for each district, on whom is imposed the statutory duty, among others, of nominating teachers for schools located in the special tax school districts, and who are prohibited from nominating a teacher who does not possess the statutory and other qualifications laid on here. It is observed by the Court that under the statute the County Board of Public Instruction is vested with the

TEACHERS

power of direction and control of the schools of the County, and that in the exercise of such power the County Board may reject the nominee of the trustees, but in the view of the Court such rejection must be reasonably exercised, and must be grounded on some dereliction in statutory or other qualification of the teacher.

The case referred to was one of mandamus against the County Board of Public Instruction by three persons who had been nominated by the Trustees of a special tax school district in Orange County as teachers in the public school at Ocoee in said county, whose nomination had been made and rejected on three separate occasions. The opinion discloses that it was shown that the relators were in every respect qualified, which fact was admitted by the motion of respondents to quash the alternative writ of mandamus.

I would say, therefore, that if there is no question as to the qualifications imposed by law with respect to a person nominated as a teacher in a school located in a special tax school district by the trustees of such district, then the county board has no lawful right or authority to reject such teacher, and should appoint and contract with such person as a teacher, and upon their refusal to do so may be compelled by mandamus so to do. On the other hand the County Board has the right to reject the nomination of a teacher when such objection is based upon the fact that the nominee is lacking in any of the qualifications required by law.

When there is an honest difference of opinion between the two Boards as to whether the proposed teacher possesses any or all of the required qualifications, it is my opinion that the County Board of Public Instruction has the responsibility and power of deciding the question and determining whether the applicant does possess the required qualifications, and that as between the two Boards, the determination of the County Board is final.

This, I think, answers your question as fully and specifically as is permissible by any general rule on the subject.

January 3, 1935.

SCHOOLS—SALARY OF TEACHERS—INCREASE

Dear Sir:

This refers to your favor of January third, relative to the increasing of salary to one of your teachers from \$66.00 to \$80.00 per month.

I see no reason why you cannot do this, provided it does not change the items of your budget, which was approved by the State School Board. If this would change the items of your school budget, then it will be necessary for the State School Board amend your budget, and they will have to grant leave and authority for you to do this; however, I take it that this small item will not increase or modify your budget, and, therefore, I see no reason why you cannot do it.

SECTION 2

SPECIAL TAX SCHOOL DISTRICT

September 18, 1936.

SCHOOLS—SPECIAL ELECTIONS FOR ISSUANCES OF BONDS IN
SPECIAL TAX DISTRICTS—EFFECT OF HOMESTEAD
AMENDMENT ON QUALIFICATIONS OF ELECTORS*Dear Sir:*

This is in reply to your inquiry of September 12.

You first request that I advise you as to what persons are qualified to vote in a special election for issuance of school bonds in a special tax district. This is covered by the provisions of Section 723, Compiled General Laws of Florida, 1927, the pertinent provisions of which section read as follows:

"in which election only the duly qualified electors thereof who are freeholders shall vote"

You also request my opinion as to whether or not the Homestead Exemption Amendment debars one in any way from voting in such a special election. A "freeholder" has been defined by the Supreme Court of Florida in the case of *Dean vs. State*, reported in 77 Southern Reporter, 107, text page 109, as follows:

"One who has an immediate beneficial ownership interest, legal or equitable, in the title to a fee-simple estate in land, may be regarded as a 'freeholder' under the statute providing that, in an election to determine whether or not bonds shall be issued by a special tax school district, 'only the duly qualified electors thereof who are freeholders shall vote'."

It is my opinion that the Homestead Amendment has no effect whatsoever upon the right of a freeholder who may be tax exempt by virtue of said amendment to vote in such a special election for the issuance of school bonds. While the property owned by such a freeholder may be exempt at this time, his property may at some time in the future increase in value so that it will not be wholly tax exempt. Such a result will follow from a general increase in property values and also from the installation of improvements. There is always the possibility too that said property will cease to be homestead property either by reason of conveyance or change in the use of name and it would therefore be returned to the tax rolls and subject to taxation for the payment of the bonds.

428 BIENNIAL REPORT OF THE ATTORNEY GENERAL
SPECIAL TAX SCHOOL DISTRICT

September 9, 1936.

SCHOOLS—REMOVAL DISTRICT TRUSTEES

Dear Sir:

You have handed me a file from which it appears that certain trustees of a special tax school district of a county in this state, are alleged to be not qualified for the offices which they hold. You request that I advise you whether, under such circumstances, you have the power to remove the trustees in question.

Without going into the question of whether the trustees are, or are not, qualified to hold their office, I beg to advise that, in my opinion, you do not have the authority, under the law, to accomplish their removal. This is so because it has been held that trustees of special tax school districts of counties in this state are subordinate school officers, within the meaning of Section 3 of Article XII of the Constitution, and that, accordingly, power to remove them is not vested in the Chief Executive of the state. In this connection, see the case of *State ex rel. Landis vs. Blake*, 148 So. 566.

July 3, 1936.

SCHOOLS—DISTRICT TRUSTEES—REMOVAL AND
FILLING VACANCIES

Dear Sir:

You ask to be advised how a vacancy on a Board of Trustees of a Special Tax School District caused by resignation of a member thereof may be filled. In reply permit me to say:

Section 568 of the Revised General Statutes of 1920, the same being Section 709 of the Compiled General Laws of 1927, provides as follows:

"All vacancies occurring in the Board of Trustees from any cause, shall be filled for the unexpired term by the County Board of Public Instruction upon nomination by the patrons of the schools".

The Supreme Court in its opinion in the case of *STATE ex rel. BLAKE*, 110 Fla. 178; 148 So. 566, held the particular provision quoted above to be valid, however, the Court in the same opinion held that Trustees are "Subordinate School Officers", subject to removal by the *State Board of Education* for cause as provided by Section 3 of Article 12 of the Constitution. In other words, the County Board has the power to fill vacancies on the Board of Trustees as stated above, but it does not have the power to remove a Trustee.

SPECIAL TAX SCHOOL DISTRICT

December 20, 1935.

SCHOOLS—APPROVAL OF DISTRICT PURCHASES MAY BE
REQUIRED BY BOARD*Dear Sir:*

This is in reply to your letter of December 19, 1935, requesting my opinion as to whether or not a county board of public instruction is empowered by statute to require that orders made by special tax school district trustees for supplies to be paid for from special tax district funds shall be approved by the county board of public instruction prior to the making of such purchases.

It is my opinion that Section 717, Compiled General Laws, which provides that no debt shall be created for a special tax school district without the approval of the county board of public instruction, is sufficient statutory authority to justify said requirement by the county board of public instruction. This view is also consistent with the provisions of Section 709, Compiled General Laws, which provides that the powers of trustees of special tax school districts shall not be those of control but of supervision only.

December 5, 1935.

SCHOOLS—NUMBER OF MILLS THAT MAY BE LEVIED AND AS-
SESSED FOR PURPOSE OF RAISING FUNDS TO PAY INTEREST
AND PRINCIPAL ON SPECIAL TAX SCHOOL DISTRICT
BONDS ISSUED UNDER SECTION 17, ARTICLE XII,
STATE CONSTITUTION*Dear Sir:*

I have your letter in which you request my opinion as to the number of mills that may be levied and assessed for the purpose of raising funds with which to pay the principal and interest on bonds issued by a special tax school district under Section 17 of Article XII of the State Constitution.

Section 17 of Article XII of the State Constitution was amended in 1924 and as amended reads in part as follows: "Whenever any such special tax school district has voted in favor of the issuance of such bonds a special tax for the payment of the interest on said bonds and the principal thereof as the same shall become due and payable shall be levied on the taxable property within the district*****".

It is my opinion that:

(1) It is the duty of the Board of County Commissioners to levy annually a tax upon all real and personal property situated within the

SPECIAL TAX SCHOOL DISTRICT

special tax school district sufficient to raise and pay the interest on the bonds and the principal thereof as the same shall become due and payable. If the bonds were issued subsequent to the amendment of this section in 1924 then there is no limit as to the millage that may be levied and assessed for the purpose of raising funds with which to pay the interest and principal on the bonds. Whatever millage is necessary to raise the required funds must be levied annually by the Board of County Commissioners. *Perry versus Consolidated Special Tax School District No. 4 in Hillsborough County, et al.*, 89 Fla. 271, 103 So. 639; *State ex rel Sovereign Camp, Woodmen of the World versus Boring, as Tax Assessor of Lee County (Fla.)*, opinion filed November 27, 1935.

(2) If the bonds were issued prior to the 1924 amendment to this section of the Constitution then the number of mills that may be levied and assessed for the payment of the interest and the creation of a sinking fund for the payment of the principal of the bonds at maturity is limited to five mills on the dollar in any one year. See Section 735, Compiled General Laws of Florida, 1927.

November 1, 1935.

SCHOOLS—TRUSTEES SPECIAL TAX SCHOOL DISTRICTS—
RESIGNATION AND FILLING OF VACANCIES

Dear Sir:

I have your letter of the 31st ultimo making inquiry as to whether or not a County Board of Public Instruction has authority to accept resignations of Special Tax School District Trustees and to fill vacancies occurring on Boards of such Trustees.

In reply I beg to call your attention to Section 709, Compiled General Laws of Florida, 1927, which provides that all vacancies occurring in the Board of Trustees for any cause shall be filled for the unexpired term by the County Board of Public Instruction upon nomination by the patrons of the school. This statutory authority for the Board of Public Instruction to fill such vacancies has been upheld by the Supreme Court in the case of *State ex rel. Landis vs. Blake*, 110 Fla. 178, 148 So. 566.

I find nothing in the statutes or the Constitution as to whom resignations shall be tendered but since the Board of Public Instruction of the County has authority to fill vacancies in Boards of Trustees of Special Tax School Districts, it would appear that the resignation of such Trustees may properly be tendered to and be accepted by the County Board of Public Instruction.

SPECIAL TAX SCHOOL DISTRICT

September 27, 1935.

SCHOOLS—POWERS OF TRUSTEES OF SPECIAL TAX DISTRICTS
AS TO GRADES*Dear Sir:*

I have your verbal inquiry if Special Tax School District Trustees have authority to keep children up to and including the 8th Grade in school in their District. This question involves the authority for determination of what school grades may be taught in a particular school.

Your attention is called to Section 709, Compiled General Laws of Florida, 1927, which provides for Trustees of Special Tax School Districts to have supervision of the public schools within the district, but the same Section specifically provides that the powers of Trustees shall not be those of control but of supervision only.

Your attention is further called to Section 710, under the same compilation, which provides that all public schools conducted within a Special Tax School District shall be under the direction and control of the County Board of Public Instruction and County Superintendent as in other districts.

In view of the foregoing it is my opinion that the authority to determine the grades that shall be taught in a particular school is vested in the Board of Public Instruction of the County and not in the Trustees of a Special Tax School District in which the school may be located.

July 10, 1935.

SCHOOLS AND SCHOOL DISTRICTS—DEPOSIT OF MONEYS—
—FEDERAL DEPOSIT INSURANCE*Dear Sir:*

This is in response to your communication of July 5, 1935, enclosing copy of letter from Mr. _____, General Counsel for Federal Deposit Insurance Corporation.

You inquire whether or not Special Tax School Districts may be considered as separate corporate entities or bodies politic, so that their funds may be separately insured; or whether such funds must be aggregated together with the other county funds, thus allowing an insurance coverage to only \$5,000.00 on the whole.

Sub-section 1 of Section 12B of the Federal Reserve Act, as amended, provides:

SPECIAL TAX SCHOOL DISTRICT

"There shall be added together all net amounts due to such owner in the same capacity or the same right, on account of deposits, regardless of whether such deposits be maintained in his name or in the names of others for his benefit."

Under Section 717 C.G.L. 1927, the Trustees of a Special Tax School District are specifically made a corporation with power to hold property, sue and be sued, and perform other corporate functions.

It is my opinion that a Special Tax School District is a separate entity or body corporate, so that its funds may be separately insured. I advise, however, that such funds must be kept in separate accounts, particularly ear marked, for the benefit of the particular Tax School District involved.

July 22nd., 1936.

SCHOOLS—QUALIFICATION OF DISTRICT TRUSTEE—SELECTION
OF TEACHERS

Dear Sir:

Replying to your favor of July 20th. in which you request my advice on two questions, the first reading as follows:

"Is it legal for a person who pays no tax, personal or real, to serve as Trustee of a Special School District since homestead exemption?"

In reply to the above question, permit me to say, the qualification of a member of a Board of Trustees of a Special Tax School District is the same as that of a voter in a Special Tax School District election. The law provides that a person who is otherwise qualified and paid a tax on real or personal property in the District, is a qualified elector in a Special Tax School District election held for the election of Trustees and levy of millage. Therefore, it would seem if a person's name appears upon the current tax assessment roll as being assessed for real or personal property, whether such person in a particular year has exemption covering all of his assessment, would be a qualified elector of the Special Tax School District. I think this is correct for the reason that while the assessment and millage might be such in a particular year to make a person exempt from the payment of any, that the following year the assessment and millage might differ so that such person would not be exempt from the payment of all real or personal property tax.

Your second question reads as follows, to-wit:

"Would a school board have a legal right to appoint a Teacher endorsed by petition by 90% of the patrons but opposed by two Trustees?"

SPECIAL TAX SCHOOL DISTRICT

In reply to this question permit me to say, the law provides that the Trustees may nominate the teachers. This means that the nominations should be made by a majority of the Trustees. There being only three Trustees, if two are opposed to the appointment of a particular person as teacher, the nomination could not be made by a majority of the Trustees and, therefore, even though 90% of the patrons might favor the appointment of a particular teacher, there would be no duty upon the Board of Public Instruction to appoint the teacher, unless nominated by a majority of the Trustees.

May 30, 1935.

SCHOOLS, SPECIAL TAX DISTRICTS, INVESTMENT OF FUNDS

Dear Sir:

Replying to Question No. 1 in your letter of the 28th instant, I beg to advise that under the provisions of Section 736 of the Compiled General Laws of Florida 1927, when the sinking fund of a special tax school district is invested in bonds of another special tax school district or in municipal or county bonds, such bonds must be of such date and maturity that they will mature on or before the date of the maturity of the investing district's bonds, and this applies to other special tax school district bonds, as well as to municipal and county bonds.

Answering your second question, it is my opinion that Section 5 of Chapter 15934, Laws of Florida, Acts of 1933, requires the budgeting of all funds of special tax school districts which are expected to be invested during the budget year, and also the budgeting of anticipated receipts from the sale and/or payment of bonds held as an investment in the sinking fund of special tax school districts.

May 22, 1935.

SCHOOLS—DISTRICT ELECTIONS

Dear Sir:

I am in receipt of your letter of the 13th inst., making inquiry as to the validity of a Special Tax School District election in which at least three men voted who had served Federal sentences and who had not had their citizenship restored.

In reply your attention is called to Section 4 of Article VI of the State Constitution which provides that no person convicted of a felony by a Court of record shall be qualified to vote at any election unless restored to civil rights. Your attention is further called to Section 5 of Article VI of the State Constitution which provides that the Legis-

SPECIAL TAX SCHOOL DISTRICT

lature shall have power to and shall enact the necessary laws to exclude from the right of suffrage all persons convicted of bribery, perjury, larceny or of infamous crime.

Your attention is further called to Sections 248 and 458, Compiled General Laws of Florida, 1927, which provides that persons who may have been convicted of bribery, perjury or larceny, or of any infamous crime, in any Court of this State or any other State, shall not be entitled to vote.

From the above you will note that it is illegal for persons to vote who have been guilty of certain crimes unless their civil rights have been restored. It may be, however, that the number of persons voting in the election mentioned was not sufficient to change the result of such election had they not voted. In such situation the Courts would probably hesitate to declare an election invalid.

For your information I have cited you to the Constitution and statutes relative to the subject of your inquiry but I do not feel disposed to give an opinion as to the validity of the election mentioned without full and complete information relative to the same.

February 8, 1935.

SCHOOLS—SPECIAL TAX SCHOOL DISTRICT BONDS

Dear Sir:

Hon. ———, State Superintendent of Public Instruction, has referred to this office your letter of the 31st ultimo, addressed to him with copy of your opinion of the same date to Hon. ———, Superintendent of Public Instruction Escambia County. Mr. ——— requests that this office reply to your letter direct with reference to that part of your opinion relating to Special Tax School District bonds found in paragraphs (1) and (2) of said opinion, reading as follows:

(1) "In 1932 Special Tax School District No. 13 voted an issue of \$15,000.00 of bonds. These bonds have been validated and prepared for issuance, but have never been sold and as a result of the adoption of the Homestead Amendment, they probably cannot be sold at any figure that has any near approach to their par value. We apprehend that the amount of the bonds, by reason of the Homestead Amendment, will now be found to be in excess of the constitutional limit of 20% "of the assessed value of the taxable property of such district." You ask what steps should be taken to cancel the bonds. If they are found to be in excess of the constitutional limit at this time, they cannot lawfully be sold at all. If the Board should upon the request of the trustees of the district that the bonds be not sold

SPECIAL TAX SCHOOL DISTRICT

but be cancelled, find that they cannot be sold, or that they are now in excess of the constitutional limit above referred to, we are of the opinion that the Board can lawfully cancel them and rescind any resolution for their sale.

(2) "You advise that monies have already been realized from a tax levied for the sinking fund of these bonds, and for the payment of interest. You inquire whether you can, by proper resolution, use this money for needed enlargements and repairs to the present building. We are of the opinion that the Board has no lawful right to use the money for the purposes suggested for the reasons below stated.

"Technically, the money already realized from the taxes assessed and collected for the servicing of these bonds is a trust fund solely for their payment. Upon the cancellation of the bonds or final determination that they are not to be sold, the persons who paid the taxes which make the fund now on hand would be entitled to a pro rata distribution of the fund. Without their consent it cannot lawfully be expended for other purposes without subjecting the members of the Board and the Trustees who concur in its expenditure to liability to account to the tax payers for it. This conclusion, we think, is inescapable. Under Section 17 of Article XII of the Constitution it is provided that this money 'shall not be applied to any purpose other than the payment of the principal and interest of said bonds.' Once it is determined that the bonds are not to be issued, and they are cancelled, the trust falls, and technically the tax payers who paid the taxes creating the fund become entitled to a refund of the money on hand in proportion to their contribution. There is no authority of law for making any other disposition. Once it is determined that the bonds will never be issued, any tax payer whose payments have contributed to the creation of the fund on hand can file a bill against the Board and its members for distribution, and the members of the Board, participating in any expenditure, would be liable to make good the fund to the full extent that it has not been applied to the payment of principal and interest of bonds."

Upon a careful reading of the above quoted portion of your said opinion, I beg to say that the same appears to be correct.

June 14, 1935.

SCHOOLS, INVESTMENT DISTRICT FUNDS

Dear Sir:

In your letter of the 13th instant you state that the Florida East Coast Railway Company has tentatively agreed to pay its school taxes

SPECIAL TAX SCHOOL DISTRICT

in your county for the year 1934, provided the school board will purchase from it the list of bonds submitted as investments for the respective sinking funds.

From the list of bonds submitted, copies of which are attached to your letter, it appears that the board is required to purchase for the interest and sinking funds of the respective special tax school districts as therein listed.

In the first place, there is no authority in law to use funds collected to pay interest in the purchase of or investment in bonds. In the next place, there is no statutory authority given the county school board to use the sinking fund of a particular special tax school district to purchase or invest in the bonds of the same district.

Section 736 of the Compiled General Laws of Florida authorizes the county board of public instruction to invest the sinking fund collected for the retirement of bonds of any district in the bonds of another special tax school district of the same county. It may also invest in county or municipal bonds of the same county.

Further than this the statute does not go, and there is no statutory authority to use the sinking fund of one district in the purchase of or investment in the bonds of the same district. If you have money in the sinking fund of the several districts involved these funds may be invested in the bonds of another district, provided the bonds invested in be of such date and maturity that they will mature on or before the date of the maturity of the district's bonds used for such investment, and provided the bonds invested in are first approved as to legality and validity by the Attorney General.

March 6, 1935.

SCHOOLS—SPECIAL TAX SCHOOL DISTRICTS—BONDS

Dear Sir:

I am in receipt of your letter of the 19th ultimo, in which you state that Special Tax School District No. 2, Cedar Key, Levy County, has \$9600.00 outstanding in district bonds now matured; that sufficient funds are not available for the payment of these bonds; that the holders of these bonds have agreed to accept 75% if the bonds can be handled now; that the district has on hand \$3800.00 and needs about \$3400.00 to provide sufficient funds to purchase all outstanding bonds at 75%.

You further state that Special Tax School District No. 7 has sufficient funds on hand to provide the additional fund of \$3400.00 required and you make inquiry if this amount could be borrowed from District No. 7 to invest in District No. 2 bonds, levying a millage in District No. 2 to repay District No. 7.

SPECIAL TAX SCHOOL DISTRICT

In reply to this inquiry I refer you to Section 736, Compiled General Laws of Florida, 1927, providing for the Board of Public Instruction to invest the sinking fund collected for the retirement of any bonds of any district in the bonds of another Special Tax School District in the same County, provided said bonds shall be purchased at par and provided that said bonds shall be of such date and maturity that they will mature on or before the date of maturity of the district's bonds with whose sinking fund they have been purchased. The provision that such bonds shall be purchased at par would appear to be a limitation upon the maximum amount to be paid and not a limitation as to the minimum amount that may be paid when purchased from individuals holding such bonds. It would, therefore, appear that the bonds of Special Tax School Districts may be used to purchase the bonds of Special Tax School District No. 2 at 75% under the provisions of and in accordance with said Section 736.

You further state that the General School Fund of the County is indebted to Special Tax School District No. 2 in the sum of \$3400.00 and making inquiry if the race track funds coming to the Board of Public Instruction, under the provisions of Section 4151 (70), Compiled General Laws of Florida, 1934 Supplement, to be used for payment of principal and interest of the outstanding indebtedness of such Board may be used to repay the sum of \$3400.00 due by the General School Fund to said Special Tax School District No. 2, thereby enabling District No. 2 to take up all of its outstanding bonds.

In reply I beg to say that notwithstanding the holding of our Supreme Court in the case of Board of Public Instruction for Pinellas County vs. Knight & Wall Co., 100 Fla. 1649, 132 So. 644, to the effect that County School Funds are not liable for the obligation of a Special Tax School District and that Special Tax School District Funds are not liable for the obligation of the County, the debts and obligations of the County should be paid as soon as funds are available therefor, regardless to whom such obligation may be due. I am doubtful of the legality of the procedure by which this indebtedness arose, but I think that counties are held to the same degree of integrity as individuals and the same should be paid from any available funds in the General School Fund whether received as race track funds or otherwise. The Teachers' Salary Fund, provided under Chapter 16,170, Acts of 1933, of course, would not be available for such purposes.

SPECIAL TAX SCHOOL DISTRICT

November 19, 1936.

TAX SCHOOL DISTRICTS—COUNTY TAX ASSESSOR ENTITLED TO
COMMISSION FOR ASSESSING TAXES—COUNTY SCHOOL
BOARD LIABLE FOR MUNICIPAL TAXES ON LOTS NOT
USED FOR SCHOOL PURPOSES*Dear Sir:*

This is in reply to your letter of November 16, with enclosures, in which you request my opinion concerning two questions.

You first request my opinion as to whether or not a county tax assessor is entitled to commission for assessment school taxes of a special tax school district. I refer you to my opinion under date of April 4, 1933, reported at page 228 of the Biennial Report of the Attorney General for the Years 1933-34, in which I expressed the view that under Chapter 15048, Acts of 1931, the tax assessor was entitled to his commission, which is to be paid from the proceeds of the collection of the tax.

You next inquire whether or not a school board is liable for municipal taxes on vacant lots not used for school purposes. It is my opinion that the school board would be liable for such taxes. The constitutional exemption is predicated in part on the element of the purpose for which property is used.

SECTION 3

INSTITUTIONS OF HIGHER LEARNING

September 21, 1935.

RESIDENCE QUALIFICATIONS OF STATE EMPLOYEES—INSTITUTIONS OF HIGHER LEARNING.

Dear Sir:

Answering your letter of the 19th inst., with reference to Chapter 16,183, Laws of Florida, Acts of 1933, prescribing residence qualifications of State and County employees, I beg to say I do not find that said Act has ever been passed upon by our Supreme Court.

Further replying I will say that said Act appears to apply to the State institutions of higher learning. You will note that Sections 1 and 2 of said Act contains exceptions in cases where after due diligence no resident of the State can be found possessing the required qualifications necessary for the particular employment.

April 9, 1935.

UNIVERSITY OF FLORIDA, ELECTRICAL POWER CONTRACT

Dear Sir:

At your request I have examined the copy, attached to your letter of the 6th instant, of the proposed agreement and contract between the City of Gainesville and the Board of Control, for the furnishing of electrical power for the University of Florida for the next five years, and succeeding periods of five years until terminated as therein provided.

The said contract is in my opinion sufficient as to form and legality, assuming, of course, that it embodies the desires of both parties thereto.

There is just one point to which attention is directed, and that is the length of notice required to terminate the contract at the end of this or any succeeding five-year period. The legal effect of the contract is that it is a continuing and perpetual contract, unless terminated by one of the parties by the notice required in paragraph numbered 12.

However, this requirement may have been and most probably was discussed by the parties and is entirely satisfactory, and if so, there is no legal objection to the same.

I am returning the copy herewith.

INSTITUTIONS OF HIGHER LEARNING

February 1, 1935.

ASSOCIATION OF LAND GRANT COLLEGES AND UNIVERSITIES,
PAYMENT DUES IN ADVANCE*Dear Sir:*

Attached to your letter of January 24, 1935, is a voucher payable to the Association of Land Grant Colleges and Universities, which you state has been refused payment because the Comptroller is of the opinion that neither he nor the Board of Control has authority to pay the dues to this association in advance.

You ask my opinion as to whether the Comptroller and the Board of Control have the authority under the law to pay this voucher.

This is, as I understand, payment of annual membership dues in the Association of Land Grant Colleges and Universities, and there is no reason in law why the same cannot be paid in advance, the same as at the end of the year. It is a continuing service, and the principle involved is no different from that of paying telephone rent in advance.

I return herewith all files attached to your said letter.

April 22, 1935.

SCHOOLS—JUNIOR COLLEGES

Dear Sir:

I am in receipt of your letter of the 19th instant, enclosing correspondence between yourself and _____, County Superintendent of Public Instruction of Palm Beach County, West Palm Beach, Florida, relative to the operation by Boards of Public Instruction of Junior Colleges covering two additional years of education. The question presented appears to be whether the public school funds of the county may be used in maintaining such Junior Colleges.

In reply your attention is called to Section 1, Article XII of the State Constitution, reading as follows:

"The Legislature shall provide for a uniform system of public free schools and shall provide for the liberal maintenance of the same."

Section 4 of Article XII provides that the interest on the State School Fund shall be exclusively applied to the support and maintenance of public free schools.

Section 6 of Article XII provides for a special tax of one mill on the dollar to be levied and apportioned annually for the support and maintenance of public free schools.

INSTITUTIONS OF HIGHER LEARNING

Section 8 of Article XII provides for each county to assess and collect annually a tax for the support of the public free schools therein.

Section 9 of Article XII provides that the school funds of the county shall be disbursed by the County Board of Public Instruction solely for the support and maintenance of the public free schools.

Section 10 of Article XII provides for a special tax school district tax for the exclusive use of public free schools.

Section 13 of Article XII provides that no law shall be enacted authorizing the diversion or lending of any county or district school funds.

Section 5 of Article IX provides that the capitation or poll tax shall be applied exclusively to common school purposes.

The inquiry involves a determination of the meaning of the words "public free schools", as used in Section 1 of Article XII of the State Constitution, above quoted.

In this connection, your attention is called to the case of *State ex rel. Moodie, et al. vs. Bryan, et al.*, 50 Fla. 293, 39 So. 929, particular attention being directed to headnotes 21 and 37 and to page 958.

This is the only Florida case which I have been able to find relating to the question. From a careful reading of the said case it would appear that in the minds of the members of the Supreme Court the words "public free schools", as used in Section 1 of Article XII of the State Constitution have reference to common or primary schools and not to colleges or institutions of higher learning.

In this situation I do not think the County and District School Funds could be legally used for the purpose of instituting or maintaining Junior Colleges covering a two year course in education beyond the present high school course of twelve grades.

SECTION 4

MISCELLANEOUS

July 17, 1936.

SCHOOLS—TRANSPORTATION OF PUPILS—JURISDICTION BOARD
PUBLIC INSTRUCTION—TRUSTEES

Dear Sir:

I am in receipt of your letter of the 11th instant, the body of which reads as follows:

"Kindly advise this office as to who has the final authority in all matters relating to the transportation of school pupils from one special tax district to another special tax district for the purpose of attending school in the latter district."

In reply your attention is called to Section 710, Compiled General Laws of Florida, 1927, which provides that all public schools conducted within a Special Tax School District shall be under the direction and control of the County Board of Public Instruction and County Superintendent.

As to the powers and duties of Trustees of Special Tax School Districts I refer you to Section 710, 711, 712, and 716 of the same compilation.

Your attention is further called to headnote 4 of the decision of our Supreme Court in the case of Board of Public Instruction vs. Knight, etc. Company, 100 Fla. 1649, 132 So. 644, reading as follows:

"All contracts on behalf of Special Tax School Districts must be made by the Board of Public Instruction of the County."

In view of the above it appears that the Board of Public Instruction is the proper authority to contract for the transportation of pupils from one district to another.

September 4, 1936.

LOCATION OF SCHOOL BUILDINGS WITHIN THREE MILES

Dear Sir:

This is in reply to your letter of September 3, in which you state the following:

"In case of a controversy between a County School Board and the Trustees of a Special Tax School District with respect to the location of a school building, kindly advise this office as to what in your opinion, constitutes a local reason or necessity

* MISCELLANEOUS

for locating two school buildings nearer than three miles to each other and as to what constitutes such local geographic features as might justify non compliance with the statute. Kindly advise further as to which Board has final authority to select a site and locate a building thereon."

Section 561, Compiled General Laws of Florida, 1927, provides in part as follows:

"Duties of board of public instruction.—Each board of public instruction is directed:

"* * * * *

"Second.—To locate and maintain schools in every locality in the county where they may be needed, to accommodate, as far as practicable, all the youth between the ages of six and twenty-one years, during not less than four months in each year.

"* * * * *

"Fourth.—To select and provide a site for each school house of not less than one-half acre of ground in the rural districts, and as nearly that amount as is practicable in the villages or cities. The situation to be dry, airy, healthful and pleasant, also reasonably central and convenient to access for all who should attend the school.

"* * * * *

"Sixth.—To employ teachers for every school in the county, and to contract with and pay the same for their services: Provided, that schools shall not be located nearer than three miles to each other, unless for some local reason or necessity."

From the provisions of the statute above set forth, it is apparent that the Board of Public Instruction has final authority to select a site and locating a building thereon. It is also apparent, however, that the provision to the effect that schools shall not be located nearer than three miles to each other unless for some local reason or necessity is a limitation upon the power vested in the Board of Public Instruction to locate and maintain schools.

You inquire further what would constitute a local reason or necessity for locating two school buildings nearer than three miles to each other and as to what might constitute local geographical features such as would justify non compliance with the statute. Without acquaintance with the actual facts, my answer would of necessity be base upon conjecture. I would prefer to state the proper rule to be that schools should not be located nearer than three miles to each other unless there is an actual local reason or necessity. The reason for locating schools within three miles of one another, to be a valid reason, must be justified by the actual state of facts and existing circumstances. The provision of the law establishing this requirement was enacted in the interests of economy and efficiency and it should be conscientiously enforced.

MISCELLANEOUS .

May 18, 1936.

SCHOOLS—BOARD OF PUBLIC INSTRUCTION—WARRANTS—
SIGNATURE*Dear Sir:*

I am in receipt of your letter of the 15th instant stating that a warrant has been presented to your office drawn on the State Treasurer, as Ex Officio Treasurer of the Teachers' Salary Fund of Leon County, Florida, signed by the Chairman of the Board of Public Instruction and attested by another member of the Board of said County. You make inquiry if the above warrant is correctly drawn and should be honored by your office. You also attach copy of a resolution of the Board of Public Instruction of Leon County, under date of the 7th instant.

The above mentioned resolution sets out that the Superintendent of Public Instruction at that time was critically ill and unable to perform his duties as such officer and it is resolved in said resolution that the Chairman of the Board shall sign warrants approved May 5, 1936, for services and accounts accruing in April or prior thereto and the said warrant should be attested by another member of the Board.

Your attention is called to Section 7 of Chapter 16,170, Laws of Florida, Acts of 1933, now Section 508 (9), Compiled General Laws of Florida, 1934 Supplement. You will note that said statute makes the State Treasurer Ex Officio Treasurer of certain County School Funds and provides for disbursement of such funds by warrant drawn by the respective Boards of Public Instruction on the State Treasurer. You will note that said statute does not require an attestation on warrants against the school funds in your office. In view of this statute and the above mentioned resolution of the Board of Public Instruction it would appear that you would be authorized to honor the above mentioned warrant or similar warrants drawn at the same time under the provisions of said resolution.

May 12, 1936.

SCHOOLS—PRINTING SEAL ON SCHOOL WARRANTS

Dear Sir:

I am in receipt of your letter of the 8th instant making inquiry relative to the Board of Public Instruction printing its seal on warrants to eliminate the process of placing the seal upon warrants by hand impression seals.

In reply to your attention is called to Section 5704 and 5705, Compiled General Laws of Florida, 1927, relating to the scrawls or scrolls, and reading as follows:

MISCELLANEOUS

5704. "A scrawl or scroll, printed or written, affixed as a seal to any written instrument shall be as affectual as a seal."

5705. "All written instruments heretofore or hereafter made with a scrawl or scroll, printed or written, affixed as a seal are declared to be sealed instruments, and shall be construed and received in evidence as such in all the courts of this State."

Your attention is further called to the case of Langley vs. Owens, 52 Fla. 302, 42 So. 457, construing said statutes. Your attention is further called to 24 Ruling Case Law 691, Seals 5; and also 7 Ruling Case Law, 137, Corporations 107. It would appear that the Board of Public Instruction, by resolution, may authorize the printing of its seal on warrants and adopt same when so printed.

April 8, 1936.

SCHOOLS—ATTENDANCE OF PUPILS OUTSIDE DISTRICT

Dear Sir:

Section 718, Compiled General Laws of Florida, makes provision for the payment of the prorata share of school expenses incurred by reason of the attendance of pupils of one district in the schools of another district. Section 718 reads as follows:

"Non-resident children may attend. Children residing outside of any special tax school district shall not attend school in any such district without the consent of the trustees thereof, and of the county board of public instruction; Provided, that nothing in this law shall be so construed as to prevent attendance from an adjoining county provided the county school board of such adjoining county shall pay a pro rata share of such attendance. Such pro rata share to be estimated by the trustees of such school where such attendance is made: Provided, further, that pupils from other districts or sub-districts shall be subject to same conditions as pupils from other counties as herein provided for."

March 31, 1936.

OFFICERS—MEMBERS BOARD OF PUBLIC INSTRUCTION—
SUSPENSION

Dear Sir:

Answering your inquiry with reference to your authority as Governor to suspend members of Boards of Public Instruction your atten-

MISCELLANEOUS

tion is called to Article IV, Section 15, and Article XII, Section 3, of the State Constitution.

Article IV, Section 15, reads as follows:

"All officers that shall have been appointed or elected, and that are not liable to impeachment, may be suspended from office by the Governor for malfeasance, or misfeasance, or neglect of duty in office, for the commission of any felony or for drunkenness or incompetency, and the cause of suspension shall be communicated to the officer suspended and to the Senate at its next session. And the Governor, by and with the consent of the Senate, may remove any officer, not liable to impeachment, for any cause above named. Every suspension shall continue until the adjournment of the next session of the Senate, unless the officer suspended shall, upon the recommendation of the Governor, be removed; but the Governor may reinstate the officer so suspended upon satisfactory evidence that the charge or charges against him are untrue. If the Senate shall refuse to remove, or fail to take action before its adjournment, the officer suspended shall resume the duties of the office. The Governor shall have power to fill by appointment any office, the incumbent of which has been suspended. No officer suspended who shall under this section resume the duties of his office, shall suffer any loss of salary or other compensation in consequence of such suspension. The suspension or removal herein authorized shall not relieve the officer from indictment for any misdemeanor in office."

Article XII, Section 5, reads as follows:

"The Governor, Secretary of State, Attorney-General, State Treasurer and State Superintendent of Public Instruction shall constitute a body corporate, to be known as the State Board of Education of Florida, of which the Governor shall be President, and the Superintendent of Public Instruction Secretary. This Board shall have power to remove any subordinate school officer for cause, upon notice to the incumbent; and shall have the management and investment of all State School Funds under such regulations as may be prescribed by law, and such supervision of schools of higher grades as the law shall provide."

In the Advisory Opinion to the Governor, 97 Fla. 705, 122 So. 7, the Supreme Court of the State of Florida considered the two above quoted provisions of the Constitution with specific reference to the authority of the Governor on the point of your inquiry. I quote you the head-note of said decision as follows:

"Power to suspend members of the board of public instruction in any county elected pursuant to Comp. Gen. Laws 1927, Sec. 252 (Rev. Gen. St. 1920, Sec. 217), is exclusively an execu-

MISCELLANEOUS

tive function, under Const. art. 4, Sec. 15, in that the term 'subordinate school officer,' as used in article 12, Sec. 3, has no reference to constitutional or statutory officers appointed by Governor or elected by people."

In view of the above it appears that you as Governor are authorized to suspend members of Boards of Public Instruction under the provisions of Article IV, Section 15, of the State Constitution.

May 1, 1936.

SCHOOLS—USE OF RACE TRACK FUNDS—CHAPTER 17213,
ACTS OF 1935

Dear Sir:

Honorable _____, County Attorney for Calhoun County, Florida, has requested my opinion as to the proper construction to be placed upon Chapter 17213, Laws of Florida, Acts of 1935, with particular reference as to whether the moneys appropriated by said Act to be distributed to the Board of Public Instruction for Calhoun County to be used by them for the purpose of paying teachers' salaries and for school bus transportation, can lawfully be used for any purpose other than the payment of current teachers' salaries and school bus transportation.

In recent years the Legislature of Florida has by various acts made provision for assisting the counties in the payment of their teachers and in the matter of transportation of pupils to and from school, and in most instances has specifically provided that such funds should be applied exclusively to the payment of current salaries and current expenses in the transportation of pupils.

This has been made necessary by the situation in many counties, caused by the inability of the counties to operate their public free schools for lack of funds sufficient with which to pay their teachers and to pay the expenses of transporting pupils to and from school. I think the practice of so limiting funds provided by the State should be construed to have become a legislatively established policy, applicable in all cases where State funds are appropriated for the payment of teachers' salaries and school bus transportation.

It is my opinion, therefore, that all moneys received from race track funds by Calhoun County, and distributed to the Board of Public Instruction for that county, as provided by Chapter 17213, Acts of 1935, was intended by the Legislature to be used exclusively for the payment of current salaries of teachers in the public free schools, and for the transportation of pupils, and that no part thereof can be used for the payment of indebtedness of the school board of said county, antedating the school year in which such funds are received.

MISCELLANEOUS

February 28, 1936.

SCHOOLS—ENDORSEMENT OF ASSIGNED WARRANTS

Dear Sir:

Your letter of February 20, addressed to Honorable W. V. Knott, State Treasurer, has been referred to me.

It is my opinion that the usual form of school warrants, which are by their terms payable to the order of the designated payee, are legally endorsed when the warrants are accompanied by signed orders from the payee to deliver to another person and may be legally paid when they are endorsed by the one to whom they are assigned. Such an order from the payee would constitute a special endorsement under Section 6794, Compiled General Laws. In accordance with Section 6791, Compiled General Laws, the signed order should be attached to the warrant.

February 10, 1936.

BORROWING LIMIT OF COUNTY BOARDS OF PUBLIC INSTRUCTION

Dear Sir:

This acknowledges receipt of a letter from _____, State Director of School Finance, dated February 8, 1936, with which he submits letter of _____, President of the Barnett National Bank, the subject of which is the borrowing limit of boards of public instruction.

Chapter 15779, Laws of Florida, Acts of 1931, authorizes the county boards of public instruction to borrow sums not exceeding eighty per cent of the amount of revenue reasonably expected to be received from the State of Florida from the county school fund. This, as I construe it, means eighty per cent of the amount reasonably expected at the time the borrow is made. If one borrow has been made and repaid during the year, then the eighty per cent would apply to the amount yet to be realized or expected from the State from the county school fund.

To use Mr. _____ illustration, if the amount reasonably expected to be received during the fiscal year is \$80,000 and the county has borrowed a total of \$52,000, which has been repaid out of the total receipts of \$56,000, the amount which could be then borrowed would be eighty per cent of the difference between the amount already received and the original amount reasonably expected during the current fiscal year, which would be eighty per cent of \$24,000, to-wit: \$19,200. This, of course, would be on condition that all prior loans had been repaid.

MISCELLANEOUS

November 22, 1935.

MOTOR VEHICLES—STOPPING FOR SCHOOL BUSES—
CHAPTER 14552, ACTS OF 1929*Dear Sir:*

This is in response to inquiry as to whether or not the above mentioned statute applies to the driver of a motor vehicle approaching a school bus from the direction opposite to that in which a school bus is headed.

You will note that Section 1 of the said Statute requires a full stop by the motor vehicle approaching a bus or other vehicle transporting school children, while such bus or vehicle is stopped and engaged in taking on or discharging such school children, provided that the bus is properly marked for identification.

Section 2 of the act requires the marking to be on the front, rear and sides, and so arranged as to be legible to persons approaching such bus, "whether travelling in the same or opposite direction."

It is my opinion that the said act requires the driver of the motor vehicle to stop when the school bus is stopped and engaged in taking on or discharging school children, regardless of the direction of travel from which the driver of the motor vehicle required to stop approaches the school bus.

October 19, 1935.

SCHOOLS—HOLIDAYS—ARMISTICE DAY—PAYMENT OF TEACHERS

Dear Sir:

Answering your letter of the 19th inst., I beg to say under the provisions of Section 6932, Compiled General Laws of Florida, 1934 Supplement, and Section 6933 of the same compilation, November 11th, Armistice Day, is a legal holiday and in my opinion public schools may be dismissed on said day and teachers paid for the same as if the schools had been conducted on such day.

October 17, 1935.

SCHOOLS—LIBRARIANS—PAYMENT FROM PUBLIC FUNDS

Dear Sir:

I have your letter of the 16th inst., making inquiry if a school librarian may legally be paid from public funds without holding a teacher's certificate provided such person does no teaching.

MISCELLANEOUS

In reply I beg to say that school librarians appear to be recognized by virtue of a regulation appearing on page 13 of "Standards and Programs of Studies for Florida High Schools" prepared by your office in pamphlet form and bearing date of August 1, 1935, reading as follows:

"In order to serve as LIBRARIAN in an accredited high school, a person must hold a valid Florida certificate covering the grade or grades which the library is to serve, provided that a course in Library Training in a reputable institution may be accepted in lieu of the teacher's certificate otherwise required."

Under Section 15 of Chapter 16,848, Laws of Florida, Acts of 1935, known as the Chain Store Act, it is provided that all monies appropriated under said particular act to the County School Fund shall be used exclusively for the payment of salaries of principals, assistant principals and teachers and for expenses incurred for the transportation of pupils. Under such provision the funds accruing from such Act may not be used for the payment of school librarians. However, since school librarians are recognized in the school system, it is my opinion that they may be paid from the General School Fund of the County and other funds accruing to the County for *general school purposes*.

October 7, 1935.

SCHOOLS—SIGNATURE ON WARRANTS—ADDRESSOGRAPH

Dear Sir:

I am in receipt of your letter of the 3rd instant, in which you state you are installing an addressograph machine in your office to write school warrants where the amount is a constant figure from month to month. You also state there is an attachment for the maker's signature and you make inquiry if the same may be used for the signing of such warrants. You also advise you will keep such plate in your possession and will initial each warrant by hand before its delivery.

In reply to your inquiry I beg to say that I do not know of any legal impediment against the signing of such warrants in the above mentioned manner. In this connection, I would suggest, however, the importance of safeguarding such a method along the lines mentioned in your letter.

October 1, 1935.

SCHOOLS—HOME DEMONSTRATION AND AGRICULTURAL AGENTS

Dear Sir:

I have your letter of the 30th ultimo making inquiry as to whether a County Board of Public Instruction may legally pay part of the salary of a County Home Demonstration or Agricultural Agent.

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In reply I beg to say I find no authority for Boards of Public Instruction to make such payments unless the same may be authorized under the provisions of paragraph 11, Section 561, Compiled General Laws of Florida, 1927, enumerating the duties of Boards of Public Instruction and containing the following language:

"To perform all acts reasonable and necessary for the promotion of the educational interest of the county and the general diffusion of knowledge among the citizens."

It is doubtful if said statute authorizes Boards of Public Instruction to make contributions to salaries of Home Demonstration and Agricultural Agents who are neither employed or controlled by such Boards.

September 20, 1935.

SCHOOLS—HEALTH—REQUIRING TWO WEEKS RESIDENCE OF
OUT-OF-STATE PUPILS PRECEDING ENROLLMENT

Dear Sir:

I have your letter of the 19th instant making inquiry if County Boards of Public Instruction have a legal right in the interest of public health to require two weeks of residence of out-of-State pupils immediately preceding enrollment in the public schools.

In reply I beg to say that in my opinion County Boards of Public Instruction have no authority to make or enforce such requirements unless so authorized by the State Board of Health. Your attention is called to Section 2 of Article XV of the State Constitution and Section 3133, Compiled General Laws of Florida, 1927, which provide that the State Board of Health shall have supervision of all matters relating to public health. Your attention is further called to Section 3160, Compiled General Laws of Florida, 1927, enumerating certain powers of the State Board of Health, among which is the power to make separate orders and rules to meet any emergency not provided for by general rules and regulations for the purpose of suppressing nuisances and communicable, contagious and infectious diseases and other dangers to the public life and health. Under these provisions it appears that the State Board of Health is authorized to take care of any emergency such as is suggested by your letter of inquiry.

September 3, 1935.

SCHOOLS—STATE SUPERINTENDENT OF PUBLIC INSTRUCTION—
PAYMENT OF SALARIES UNDER SECTION 660, C.G.L.

Dear Sir:

I am in receipt of your letter of the 3rd inst., enclosing request of _____, State Superintendent of Public Instruction, for pay-

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ment for the month of August of certain salaries in his office under Section 660, Compiled General Laws of Florida, 1927, provided there is a prospect of further delay in the payment of such salaries from the General Appropriation Act. You make inquiry if such salaries may legally be charged to the "Teachers' Examination Fund", as requested.

In reply I beg to say after a careful examination of the statutes it is my opinion that the law contemplates the payment of such salaries from the General Appropriation Act, and that Section 660, Compiled General Laws of Florida, 1927, providing for the examination fees of teachers to be kept in a Special Fund for the payment of expenses incident to the examination and certification of teachers, does not contemplate the payment of general salaries in the office of the State Superintendent of Public Instruction from such "Teachers' Examination Fund".

August 24, 1935.

SCHOOL BUSES—INSURANCE

Dear Sir:

In reply to your letter of the 22th insta., in which you inquire as to whether House Bill No. 379, Chapter 17252, Acts of the Legislature of 1935, requires County Boards of Public Instruction to carry insurance covering damage to both persons and property, I beg to state that it is my opinion that the Legislature intended, by the passage of such act, that insurance should be carried covering any liability of the owner or operator of school buses by reason of injury to persons or property to the extent of \$5,000.00, as the statutes does not restrict insurance to be carried to cover either personal injury or injury to property.

The insurance should be carried by the owner and operator of the bus, where he is under contract, with the County Board, but if the County Board owns and operates a bus by employing its drivers, then the County Board should carry the insurance and pay the premiums.

July 25, 1935.

SCHOOLS—BORROWING FOR BUILDING PURPOSES TO MEET
FEDERAL AID REQUIREMENTS

Dear Sir:

I am in receipt of your letter of the 17th instant making inquiry if a County Board of Public Instruction is authorized, under existing statutes, to borrow money on coupon warrants or on notes of the Board for building purposes in order to meet Federal Aid requirements in building school houses.

MISCELLANEOUS

In reply I beg to say Section 566, Compiled General Laws of Florida, 1927, and Chapter 15,779, Laws of Florida, Acts of 1931, appear to be the only statutes authorizing borrowing by the Board of Public Instruction. Section 566 relates to borrowing for the purpose of paying outstanding indebtedness. Chapter 15,779, Laws of Florida, Acts of 1931, provides for borrowing, but such Act is limited by the numerous conditions and requirements recited therein. The construction of our Supreme Court as to said statute in the case of Board of Public Instruction of Flagler County, et al. vs. McKenzie, 103 Fla. 39, 136 So. 899, as shown by head-note 5 is as follows:

"Chapter 15779, Acts of 1931, contemplates that evidences of indebtedness executed by the Board to be paid from the county school fund shall be for the amounts that may be legally borrowed and received by the board with interest at a rate not exceeding 8 per cent. per annum; that the sums borrowed shall not exceed 80 per cent. of the amount reasonably expected to be received for the fiscal year from the State of Florida for the county school fund; that the estimate of all revenue to be received from the state shall be approved by the state superintendent of public instruction; that any moneys borrowed under the act for any fiscal year shall be repaid out of the first receipts of funds from the state; and that no money shall be borrowed unless all moneys borrowed under the act for previous fiscal years have been repaid in full."

July 16, 1935.

SCHOOLS—PAYMENTS BY BOARD OF PUBLIC INSTRUCTION

Dear Sir:

I have your letter of the 3rd instant, enclosing a communication from _____, Superintendent of Public Instruction of Indian River County, under date of July 2, 1935. Mr. _____ states that a resolution was recently passed by the Board that all payments of coupons and bonds must first be submitted to the Board in session before being paid.

In reply to what seems to be the inquiry I beg to say that the County Superintendent of Public Instruction would not be authorized to make payments except when and as authorized by the Board of Public Instruction.

MISCELLANEOUS

August 9, 1935.

SCHOOLS—BOARD OF PUBLIC INSTRUCTION—PAYMENT EXPENSES OF MEMBERS THEIR ATTORNEYS FEE FOR HEARING ON CHARGES BEFORE STATE SENATE

Dear Sir:

I am in receipt of your letter of the 29 ultimo, advising that a few months ago proceedings were brought against two members of the Board of Public Instruction in an attempt to remove them from office; that in defense of themselves an attorney was employed to defend them before the State Senate Committee. You make inquiry if these expenses may legally be paid from the General County School Fund.

In reply to your inquiry I beg to say I find no statutory authority for the payment of such expenses.

February 12, 1936.

INSURANCE—SCHOOL BUILDINGS IN COMPANIES DIVIDING PROFITS

Dear Sir:

This will acknowledge your letter of February 5, 1936, in which you state that you represent the Atlantic Mutual Fire Insurance Company; that said insurance company is a mutual company which divides profits with the policy-holders; and that the School Board has refused to allow any insurance on public buildings to be written in such a company.

You desire to know whether or not it is lawful for insurance to be placed with such a company by said Board.

I have previously rendered opinions under date of February 12, 1934, May 8, 1934, and October 10, 1934, touching upon this subject.

For instance, in my opinion under date of May 8, 1934, after full and complete consideration, I reached the conclusion that it is not legal to insure school buildings in foreign mutual associations or companies doing business in the State of Florida, when there is any contingent liability assumed or agreed to be paid by the school authorities, or where such school authorities, in effect, become members of the association or corporation by sharing in the profits (or surplus over cost) thereof.

As a result of the opinion last referred to, my opinion under date of February 12, 1934, which was confined to domestic mutual fire insurance associations organized under the laws of Florida, was extended, subject to the same restrictions, to foreign mutuals doing business in Florida.

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In my opinion under date of October 10, 1934, I was dealing with the question of whether or not such insurance could lawfully be placed with a foreign company issuing policies in Florida similar to those usually issued by stock fire insurance companies in which there was no provision either for assessment of policyholders in case of loss, or distribution of profits to policyholders. In that opinion I concluded that, in view of the fact that no provisions were made in the policy, either for assessment or for distribution of profits, school boards or other local authorities might properly insure public buildings in such a company.

However, it is apparent from your letter that the Atlantic Mutual Fire Insurance Company, in its policies, makes provision for distribution of profits to policyholders. I am, therefore, of opinion that insurance on such buildings may not be placed legally with such a company.

March 21, 1936.

INSURANCE—INSURANCE OF SCHOOL BUILDINGS WITH MUTUAL
FIRE INSURANCE COMPANIES

Dear Sir:

This refers to your letter which reached us on March 19th, and to your prior letter under date of February 15, 1936, relative to the above subject.

I note that you desire me to cite to you the authorities in support of my previously rendered opinion under date of January 18, 1934, to the effect that the insurance of public school buildings is prohibited in mutual insurance companies where the policy of insurance makes provision for assessment of the members of such company and for division of profits with such members. See also, in connection with this matter, my opinions under date of February 12, 1934, May 8, 1934, and October 10, 1934, all dealing with various phases of this matter.

In my opinion first referred to, I stated that, by a mutual association or company, I understand a company or association engaged in effecting mutual insurance, that is such policies of insurance by which the holders mutually agree to indemnify each other, such indemnity usually being effected by an assessment.

Article IX, Section 10, of the Constitution of Florida, provides, in part, as follows:

"Nor shall the State become a joint owner or stockholder in any company, association or corporation. The Legislature shall not authorize any county, city, borough, township or incorporated district, to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan

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its credit to, any corporation, association, institution or individual."

Under the general law applicable to mutual insurance companies of the type above stated, policyholders become members thereof, and it is my opinion that Article IX of Section 10 aforesaid, prohibits, subject to the limitations expressed in my prior opinions, the insurance of public buildings in such mutual companies, because the insured becomes, in effect, a stockholder in such association, and a member thereof, and is, in effect lending its credit to such association or corporation.

March 18, 1936.

OFFICERS—OUTSIDE EMPLOYMENT OF SCHOOL BOARD MEMBER

Dear Sir:

I have your letter of the 11th instant making inquiry if any law is being violated by the Florida Board of Forestry in employing a member of the County Board of Public Instruction as a Forest Service Ranger.

In reply I beg to say I find no statute on the subject of your inquiry. For your general information I quote you Section 15 of Article XVI of the State Constitution, reading as follows:

"No person holding or exercising the functions of any office under any foreign Government, under the Government of the United States, or under any other State, shall hold any office of honor or profit under government of this State; and no person shall hold, or perform the functions of, more than one office under the government of this State at the same time; Provided, Notaries Public, militia officers, county school officers and Commissioners of Deeds may be elected or appointed to fill any Legislative, executive or judicial office.

The position of Forest Ranger would appear to be an employment and not an office and you will note that the above Section of the Constitution provides that County school officers may be elected or appointed to fill any legislative, executive or judicial office. Directly answering your inquiry, I may say that I find no statutory or constitutional provision which specifically prohibits the employment mentioned.

August 26, 1936.

VOLUSIA COUNTY—BOARD OF PUBLIC INSTRUCTION—INVESTMENT DISTRICT FUNDS

Dear Sir:

I have for acknowledgment your letter of August 21, 1936, relative to the above matter. Section 736, Compiled General Laws of Florida,

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contemplates that before a County Board of Public Instruction is authorized to purchase, with a special tax district's interest and sinking fund, any bonds as an investment, an opinion shall be secured from the Attorney General, approving the legality and validity of the bonds so proposed to be purchased. Upon proper request, therefore, and upon being supplied with the necessary information upon which to base his opinion, it is the duty of the Attorney General to advise whether the bonds contemplated to be purchased, are legal and valid.

This section of the statutes, however, does not make it the duty of the Attorney General to advise upon any of the following questions:

(a) As to whether the bonds proposed for purchase, if valid, are of such character as to be proper subjects for purchase;

(b) Whether an exchange of outstanding original bonds for re-funding bonds is authorized, or constitutes a transaction of purchase;

(c) Whether bonds purchased as investments may later, prior to maturity, be sold and the proceeds reinvested;

(d) Whether a district's sinking fund may be invested in its own bonds;

(e) Whether, if so invested, the effect is, or is not, to retire the bonds so purchased.

Under these circumstances, if the County Board of Public Instruction of Volusia County contemplates the purchase of any bonds as investments for the interest and sinking funds of the respective school tax districts under its supervision, I shall be pleased, upon being furnished with the proper information upon which to base my opinion, to advise as to the legality and validity of the bonds so proposed for purchase.

As to the various other questions, I do not believe that the law contemplates that it shall be the duty of the Attorney General to advise.

July 11, 1935.

**SCHOOLS—LIABILITY INSURANCE ON SCHOOL BUSES—HOUSE
BILL NO. 379, CHAPTER 17252, ACTS OF 1935**

Dear Sir:

I have before me your request for the construction of House Bill No. 379, Laws of Florida, Acts of 1935, relative to owners or operators of school busses carrying liability insurance and enclosing communication from LaFayette Insurance Agency relative to the same question. One paragraph of the letter enclosed reads as follows:

"The usual liability policy covers up to \$5,000 for bodily injury to one person and up to \$10,000 for more than one person

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involved in one accident, and up to \$5,000 for property damage claims. Claims of passengers are covered in the usual policy."

Doubtless the Legislature had in mind more particularly accident insurance for the children riding as passengers on such busses but the language of the statute appears to be broad enough to cover property liability as well. Since the statute in general terms requires "liability insurance", it is my opinion that the Legislature probably had in mind the usual liability insurance policy such as described in the above quoted paragraph.

Find returned herewith letter of LaFayette Insurance Agency.

February 20, 1935.

SCHOOLS—PLANS AND SPECIFICATIONS FOR BUILDINGS—
ARCHITECTS

Dear Sir:

I am in receipt of your letter of the 14th inst., calling attention to Section 12 of Chapter 6542, Laws of Florida, Acts of 1913, now Section 732, Compiled General Laws of Florida, 1927, the first part of which reads as follows:

"As soon as practicable after the said bond issue has been voted upon and authorized, if the same be for the purpose of acquiring, enlarging, furnishing or otherwise improving school buildings, the county board of public instruction, upon the recommendation of the trustees of such special tax school district, shall prepare proper plans and specifications therefor; * * *

You make inquiry as to whether said proper plans and specifications must be prepared by an architect registered under the laws of Florida.

In reply I beg to say the above mentioned Section does not contain such requirement. Neither do I find any other statute containing such requirement.

In this connection, your attention is called to Section 3570, Compiled General Laws of Florida, 1927, relating to architects, the first sentence of which reads as follows:

"Nothing contained in this Chapter shall be construed to prevent any person, mechanic or builder from making plans and specifications for, or supervising the erection, enlargement, or alteration of any building that is to be constructed by himself or employer."

Your attention is further called to Section 561, Compiled General Laws of Florida, 1927, prescribing the duties of Boards of Public In-

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struction. Paragraph 5 of said Section authorizes Boards of Public Instruction to do whatever is necessary with regard to purchasing and renting school sites and premises, constructing, repairing, furnishing, warming, ventilating, keeping in order and improving the school houses. We find no provision where plans for construction or warming are required to be approved by an architect.

July 3, 1935.

INSURANCE—SCHOOL BUSES—HOUSE BILL NO. 379 OF 1935,
CHAPTER 17252

Dear Sir:

Answering your inquiry of the 25th ult., I beg to say Section 1 of House Bill No. 379, Laws of Florida, Acts of 1935, requiring owners or operators of school busses to secure and keep in force liability insurance on account of each school bus in the sum of not less than \$5,000.00 is mandatory.

Answering your inquiry as to the second Section of the Act authorizing the several County Boards of Public Instruction and Trustees of Special Tax School Districts to insure school children against accident while being transported to or from school, I beg to say such Section appears to be authoritative and not mandatory.

May 16, 1935.

SCHOOLS—BOARD OF PUBLIC INSTRUCTION—PLACE OF
REGULAR MEETINGS

Dear Sir:

I am in receipt of your letter of the 4th instant, in which you state that you advised the Board of Public Instruction of your County that the regular meetings of the Board could only be held at the Court House at LaBelle in the office of the Superintendent but if occasion required special meetings might be held at other places. You request my opinion and refer to a prior letter from this office to you on the same subject.

In reply I beg to say the records in this office do not show the receipt of a prior letter from you on this subject.

Answering your inquiry I beg to say that I fail to find any statute requiring regular meetings of the Board of Public Instruction to be held at the Court House or the County seat. However, the statutes appear to contemplate that regular meetings of the Board should be held at the County Court House. In this connection, your attention

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is called to Section 526, Compiled General Laws of Florida, 1927, providing for mileage to members of such Boards to and from the County Court House by the nearest practicable route.

April 11, 1935.

SCHOOLS, FUNDS, USE THROUGHOUT COUNTY

Dear Sir:

With reference to the use of the general county millage which is levied and collected for general school purposes in the county, I would state that it is my opinion that under the law the county school board has the discretionary power to use such funds in the various parts of the county, or any where in the county, or for any purpose, so long as it is done for the promotion of the educational interest of the county and the general diffusion of knowledge among the citizens. See Section 561, Compiled General Laws, sub-section 11.

I am assuming, of course, that Lake County has no budget law which might interfere with this. If items have been budgeted under a budget law, they probably would be fixed appropriations and could not be violated at this time.

March 15, 1935.

SCHOOLS—BOARD OF PUBLIC INSTRUCTION—NUMBER OF MEMBERS

Dear Sir:

I am in receipt of your letter of the 12th instant, making inquiry if the number of members of a County Board of Public Instruction can be increased by a local or special law. You refer to Section 517, Compiled General Laws of Florida, 1927, which provides that such Board shall consist of not more than three members.

The State Constitution in Article XII mentions County Boards of Public Instruction only one time (See Section 9 of said Article). The Constitution does not fix the number of members of such Board. Your attention, however, is called to Section 1, Article XII of the State Constitution with reference to education, reading as follows:

"The Legislature shall provide for a uniform system of public free schools and shall provide for the liberal maintenance of the same."

The above quoted constitutional requirement for uniformity in my opinion makes it necessary that the number of members of the Boards

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of Public Instruction be the same in all counties of the State and I do not think under the Constitution a local or special law for any particular county could be passed making the number of members of such Board different from the number required in other counties. A general law on the subject, embracing all counties of the State may be passed, changing the number of the members of such Board from three to five, or any other number that may be deemed proper.

June 24, 1935.

SCHOOLS—DEPOSITORIES—SECURITIES

Dear Sir:

Answering your letter of the 15th instant making inquiry if the 1935 Legislature made provision for recognizing the Federal Deposit Insurance Corporation, I refer you to Senate Bill No. 194, Chapter 16798, of the 1935 Legislature, approved May 6, 1935.

This is a very brief statute consisting of only three sections. I quote you Section 1, reading as follows:

"Notwithstanding any provisions of law of this State or any political subdivision thereof requiring security of deposits in the form of collateral, surety bond, or in any other form, security for such deposit shall not be required to the extent that said deposits are insured under the provisions of Section 12-B of the Federal Reserve Act as amended, or any amendments thereto."

Section 2 repeals all laws in conflict and Section 3 provides for the Act to take effect immediately upon its becoming a law.

May 23, 1935.

SCHOOLS—SALARY OF COUNTY SUPERINTENDENT

Dear Sir:

I am in receipt of your letter of the 21st instant, making inquiry if the Legislature of 1933 placed the salary of County Superintendent as that which was paid in January 1931, and also making inquiry as to whether there is any Act of special application to your county relating to the salary of the County Superintendent of Public Instruction.

In reply your attention is called to Section 551, Compiled General Laws of Florida, 1927, providing that the salaries of County Superintendent of Public Instruction shall be based upon the total annual receipts of each county for school purposes. Your attention is further called to Section 558 (2), Compiled General Laws of Florida, 1934 Supplement, be-

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ing originally Chapter 15,033, Acts of 1931, as amended by Chapter 16,236, Acts of 1933. This Section contains the following language:

"Except as otherwise provided by law the same salaries paid during the months of January 1931 and thereafter shall be continued to be paid to each County Superintendent of Public Instruction in the State of Florida."

This Section provides that no such salaries shall exceed \$6,000.00 per year and has other provisions which do not relate to your county.

Answering your further inquiry, I beg to say I do not find any statute relating to the subject of your inquiry of a local nature pertaining to your county.

May 8, 1935.

SCHOOLS—BOARD OF PUBLIC INSTRUCTION—PURCHASE OF
SUPPLIES FROM RELATIVES

Dear Sir:

I have your letter of the 7th instant propounding two questions as follows:

"1. Is it legal for a Board of Public Instruction to make purchases from a firm in which a wife or a husband of a member of said Board is a partner?

"2. What, if any, are the powers of a County Superintendent when, in his opinion, the tax-payers' money is being squandered through unbusinesslike plans of the Board? I have in mind right now the matter of paying janitors their full salaries during the summer vacation when the schools are all closed."

Replying to your first question I beg to say it is the policy of this office not to advise one official as to the powers and duties of another official. However, since you are Ex Officio Secretary of the Board of Public Instruction of your County, without giving you an official opinion, I cite you to Section 7472, Compiled General Laws of Florida, 1927, reading as follows:

"No State or county board or municipal board or council shall purchase supplies, goods or materials for public use from any firm or corporation in which any member of such board is either directly or indirectly interested, nor shall any such board pay for such supplies, goods or materials so purchased. Any person violating the provisions of this section shall be punished, upon conviction, by fine not exceeding five hundred dollars or imprisonment not exceeding one year: Provided, that no mem-

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ber of any board aforesaid who shall have recorded his vote against such illegal purchase, or who shall have been absent at the taking of the vote thereon, shall be convicted of a violation of this section."

Replying to your second question with reference to paying janitors during the summer vacation when schools are closed, I beg to say I do not know of any reason why janitors may not be paid for services for the school term in 12 monthly payments instead of a number of payments representing the number of school months. Whatever payments they receive, however, should be based on and commensurate with the services rendered during the school term unless additional services are required of them during the vacation period.

February 25, 1935.

SCHOOLS—BONDS, REFUNDING

Dear Sir:

I am in receipt of your letter of the 20th instant, making inquiry if the law provides for a County Board of Public Instruction to refinance its bonded debts without recourse to the Federal Municipal Bankruptcy Act of 1933. I assume that you have reference to Special Tax School District bonds.

Our Supreme Court in the case of Barrow vs. Moffett, et al., 95 Fla. 111, 116 So. 71, and in the case of State vs. Board of Public Instruction Indian River County, 98 Fla. 1152, 125 So. 357, held that the Constitution contemplates the payment when due of expenses for maintenance and support of schools and does not contemplate the issue of bonds to pay for past indebtedness.

With reference to issue of bonds for Special Tax School Districts, I refer you to Chapter 15,772, Acts of 1931, and to Section 17, Article XII, and Section 6, Article IX, as amended in 1930, of the State Constitution providing for bond issues under certain circumstances enumerated.

With reference to the issue of refunding bonds of Special Tax School Districts to take care of outstanding bonds, I refer you to the decision of our Supreme Court in the case of State vs. Special Tax School District No. 5 of Dade County, Florida, 107 Fla. 93, 144 So. 356, and I quote you headnotes two and three of said decision as follows:

2. "Constitutional amendment authorizes issuance of refunding bonds by counties, municipalities, and districts, without requiring election, word 'district' including school districts. (Const. art. 9, Sec. 6, as amended in 1930 Laws 1931, Ex. Sess., c. 15772.)"

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3. "School district bonds may be refunded without election regardless of effect of refunding on maturity of outstanding bonds, portions of which are to be refunded (Const. art. 12, Sec. 17, as amended in 1924; Const. art. 9, Sec. 6, as amended in 1930; Laws 1931, Ex. Sess., c. 15772)."

From the above decision it appears that Special Tax School District refunding bonds may be issued without the necessity of an election when such refund is for the purpose specified in amended Section 6 of Article IX.

February 1, 1935.

SCHOOLS—TIME WARRANTS ISSUED BY BOARD OF PUBLIC
INSTRUCTION—CHAPTER 8548, ACTS OF 1921—
CHAPTER 1093, ACTS OF 1925

Dear Sir:

This is in response to your communication under date of January 25, 1935.

As you know, the Attorney General is not the legal adviser to a county board of public instruction, and because of the tremendous press of State matters, as to which we are under a constitutional and statutory duty to perform, it is impossible for us to answer communication of a purely local nature such as yours.

However, I call to your attention the cases of Leonard vs. Franklin, 84 Fla. 402, 93 So. 688; Barrow vs. Moffett, 95 Fla. 111, 116 So. 71; Johnson vs. Board of Public Instruction, 81 Fla. 503, 88 So. 308; Board of Public Instruction vs. Union School Furnishing Company, 129 So. 824.

In each of the above cases, our Supreme Court has held inoperative a statute similar to the one involved in your inquiry, as violative of the provisions of Article 12 of the Constitution of Florida involved.

These cases are distinguished from the type of case involved in Savage vs. Board of Public Instruction, 133 So. 341, which I suggest you see for a complete discussion and citation of cases.

January 24, 1935.

SCHOOLS—PAYMENT OF INTEREST IN ADVANCE ON LOANS

Dear Sir:

I am in receipt of your letter of the 16th instant, making inquiry if the Board of Public Instruction has authority to pay interest in advance on a loan.

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In reply your attention is called to Section 566, Compiled General Laws of Florida, 1927, authorizing the Board of Public Instruction to borrow money under certain circumstances and pay not exceeding 8% interest per annum. The statute is silent as to when such interest may be paid.

In this connection, your attention is called to the case of Board of Public Instruction for LaFayette County vs. First National Bank of Gainesville, decided by our Supreme Court, the second headnote of which reads as follows:

"Statute authorizing County School Board to borrow money impliedly empowered it to execute evidences of indebtedness in accord with usual business practices, when not illegal."

This case was referred to by our Supreme Court in the case of First National Bank of Marianna vs. Board of Public Instruction for Jackson County, 154 So. 314, in which it was held that in suit on a note of the Board of Public Instruction stipulating for attorney's fees in case of the necessity of collection by suit, that attorney's fees could be collected in such suit.

Using the reasoning of the Court in the said two cases, it appears that the statute authorizing the Board of Public Instruction to borrow money by necessary implication empowers the Board to negotiate and secure such loan in accord with usual business practices when not inconsistent with law. The usual business practice is to secure loans from banks and the usual banking custom is to charge interest in advance. In this situation, it is my opinion that the Board of Public Instruction is authorized to pay interest in advance on loans secured.

January 4th., 1935.

PAYMENT OF COMMISSION OF COUNTY OFFICER BY BOARD OF
COUNTY COMMISSIONERS OR COUNTY SCHOOL BOARD

Dear Sir:

This refers to your favor of January 3rd., making inquiry as to whether or not the County Board can pay for the cost of Commissions issued to the various members, which is in the sum of \$10.00.

I know of no law authorizing this payment. This probably does work some hardship, but it is one of the penalties that those elected to office must suffer.

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October 8, 1936.

SCHOOLS—EXPENDITURE OF INSURANCE MONEY FOR PURCHASE
OF ANOTHER BUILDING*Dear Sir:*

This is in reply to your letter of October 8, in which you request my opinion as to whether or not insurance money collected on the fire loss of a school building can be used in the purchase of another building without recourse to a bond election for the purpose of raising funds for the purchase or erection of a building.

It is my opinion that such insurance money can be used in the purchase of another school building without recourse to such a bond election. My opinion is based upon the fifth paragraph of Section 561, Compiled General Laws of Florida, 1927.

This subject is specifically covered by Section 1680, Compiled General Laws of Florida, 1927, which reads as follows:

"1680. (1203) Proceeds of insurance may be used to replace property destroyed.—Whenever any State, county, municipal or other public property in this State is destroyed or partially destroyed, by fire or otherwise, upon which there is insurance, the proceeds of such insurance when collected may be used by the officer or officers having the supervision of the property destroyed, for the purpose of construction to replace such property, or for the repair thereof. (Ch. 6184, Acts 1911, § 1.)"

While the above statutory provisions authorize the expenditure of the proceeds of such insurance "for the purpose of construction to replace such property," it is my opinion that this section of the statutes should receive a liberal rather than a strict interpretation. The chief purpose intended by the Legislature was to provide another building to be paid for out of the proceeds of the insurance on the old building and I am sure that the Legislature did not intend to provide that a new building must necessarily be constructed, thereby excluding the possibility of purchasing an available building.

October 14, 1936.

VOCATIONAL SCHOOLS—BEAUTY CULTURE—TEACHING IN
SCHOOLS FOR DEAF AND BLIND AT ST. AUGUSTINE*Dear Sir:*

I am in receipt of your letter of the 13th instant enclosing copy of letter to you under date of the 8th instant from Dr. _____, Presi-

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dent of the Florida School for the Deaf and Blind at St. Augustine with reference to teaching beauty culture at said school and with particular reference to whether the instructor employed for such work must pay the license required of teachers of such subject under the Beauty Culture Act, Chapter 16,800, Acts of 1935.

Your attention is called to Sections 840 to 847, Compiled General Laws of Florida, 1927, with reference to vocational schools as well as the above mentioned Chapter 16,800 of 1935, relating to beauty culture.

Your particular attention is called to paragraph (d) of Section 4 of the Beauty Culture Act, Chapter 16,800, above mentioned, which provides that the provisions of said Act shall not be construed to apply to persons employed in State or local institutions. The Florida School for the Deaf and Blind is a State institution and, in my opinion, the instructor or instructors employed in such institutions for teaching the subject of beauty culture would be exempt from the licensing provisions of said Beauty Culture Act. However, in my opinion the graduates in such course from said institution would be required to take the usual examination under said Beauty Culture Act before they would be permitted to practice beauty culture in this State.

December 28, 1936.

COUNTY SCHOOL BOARD—IS PREMIUM ON COUNTY SUPERINTENDENT'S SURETY BOND PROPER EXPENSE

Dear Sir:

This is in reply to your request for my opinion as to whether or not the premium on a county superintendent's surety bond is a proper expense of the County School Board.

It is my opinion that there is no statutory authority authorizing the County School Board to pay this premium. This is in line with my previous opinion under date of July 16, 1931, reported at page 515 of the Biennial Report of the Attorney General for the years 1931-32, and my opinion under date of January 6, 1933, reported at page 216 of the Biennial Report of the Attorney General for the years 1933-34.

December 29, 1936.

COUNTY SCHOOL FUNDS—EXPENDITURE IN SUPPORT OF
PUBLIC LIBRARY

Dear Sir:

This is in reply to your letter of December 17th, with enclosed correspondence.

MISCELLANEOUS

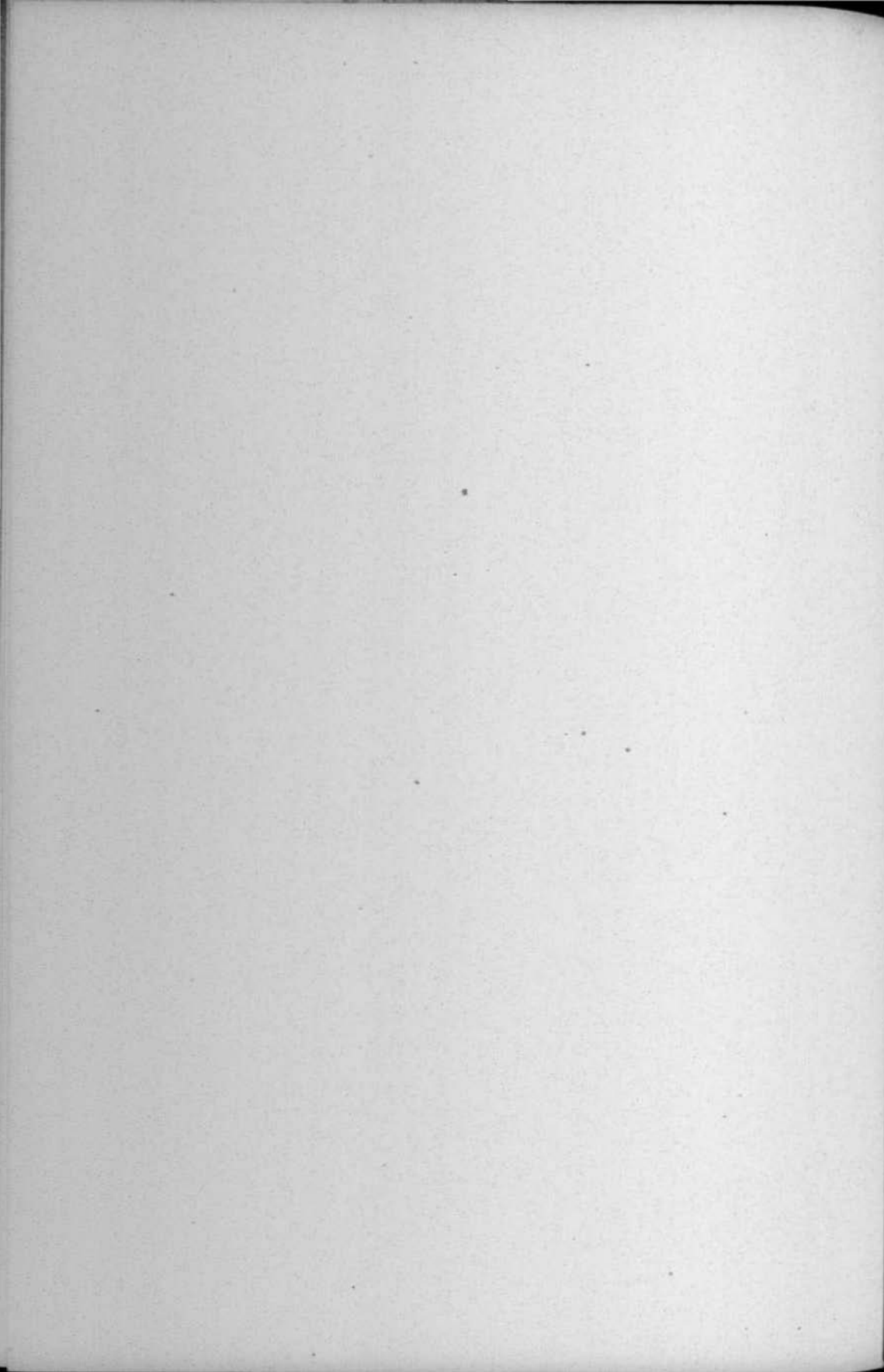
It would appear that the public library of Winter Haven is in serious financial difficulty, and unless some means are found to give it assistance, it will probably have to either close or seriously restrict its activities. It would further appear that the students of the Winter Haven High School now use the facilities of the public library very extensively, and the closing of this library would seriously affect them. It is suggested that the County School Board appropriate the sum of One Thousand Dollars for assistance to the library during this school year, so that the Winter Haven schools may continue to have the benefit of its facilities.

So long as the Winter Haven public library is operated as such and not as a school library, it would be my opinion that the County School Board is not authorized under the law to make this expenditure.

CHAPTER IX

STATE BOARDS AND COMMISSIONS

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STATE BOARDS AND COMMISSIONS

SECTION 1

BOARD OF HEALTH

September 11, 1936.

STATE BOARD OF HEALTH—RULES AND REGULATIONS—PENALTY
FOR VIOLATION*Dear Sir:*

In your letter of September 2 you request my opinion as to the penalty possible for violation of State Board of Health rules or regulations and you also inquire whether Section 5 of Rule 96, which you enclose, provides a legal penalty.

I call your attention to Section 7731, Compiled General Laws of Florida, 1927 (Chapter 5931, Laws of Florida, Acts of 1909, Section 2). This section makes violation of rules and regulations adopted in pursuance of Section 3160, Compiled General Laws, a misdemeanor. There are two other sections which give the State Board of Health authority to make rules and regulations, to-wit, Sections 3153 and 3164, Compiled General Laws of Florida. Section 7731, hereinabove referred to, applies only to such rules as may be adopted pursuant to Section 3160.

It is my opinion that the violation of any rules and regulations reasonably adopted under the provisions of Section 3160, Compiled General Laws of Florida, constitutes a misdemeanor, the penalty for which is provided in Section 7104, Compiled General Laws of Florida (Chapter 5920, June 4, 1909, Section 1, amended by Chapter 6222, June 5, 1911, Section 1).

Section 5 of Rule 96 reads as follows:

"Violation of this Rule of the State Board of Health made by it in pursuance of Chapter No. 5931, Laws of Florida, shall constitute a misdemeanor punishable upon conviction by imprisonment not exceeding 30 days or a fine not exceeding \$50.00."

It is my opinion that said rule should either state the exact penalty provided in Section 7104, to-wit, "a fine not exceeding \$200.00 or imprisonment not exceeding 90 days or both at the discretion of the court" or it should state that violation of the rule shall constitute a misdemeanor punishable in accordance with the provisions of said statute. Section 5 as it now stands does not strictly adopt the provisions of said Section 7104, Compiled General Laws.

472 BIENNIAL REPORT OF THE ATTORNEY GENERAL
BOARD OF HEALTH

April 22, 1936.

STATE BOARD OF HEALTH—FUNDS COLLECTED FOR
BIRTH CERTIFICATES

Dear Sir:

I am in receipt of your letter of the 14th inst., with reference to use of funds collected under Section 3291, Compiled General Laws of Florida, 1927, which provides for a fee of fifty cents for a certified copy of a birth or death record. You indicate that this charge has been waived until recently when the Board passed a resolution to make the charge for such services.

The only provision in the statute as to the disposal of funds so collected is that a correct account shall be kept of all fees collected and the same shall be turned over to the State Treasurer. There is no mention of any special account and it would appear that the same should be credited to the general account of the State Board of Health.

The General Appropriation Act of 1935, Chapter 16,772, makes a definite appropriation for salaries and also for necessary and regular expenses of the State Board of Health. There appears to be no appropriation in any statute of birth or death certificate fees.

Under Article IX, Section 4 of the State Constitution which provides that "No money shall be drawn from the Treasury except in pursuance of appropriations made by law," it does not appear that such fees so deposited will be subject to warrants being drawn against same over and above the general appropriation until the Legislature shall provide therefor.

You further indicate that a small banking charge is being requested for the handling of these small items and that you have written the State Comptroller with reference to same. I assume that you will be advised as to this matter by the Comptroller. It seems to me, however, if these sums were directly forwarded by the State Board of Health to the State Treasurer this charge would be obviated.

April 15, 1936.

STATE BOARD OF HEALTH—PREPARATION AND SALE OF A
PLASTER FOR REMOVAL OF CANCER

Dear Sir:

I am in receipt of your letter of the 14th instant containing the following inquiry:

"Would persons not registered as a physician be permitted to prepare and sell a plaster for the removal of cancer?"

BOARD OF HEALTH

In reply your attention is called to a part of Section 3416, Compiled General Laws of Florida, 1927, defining the practice of medicine as follows.

"A person practicing medicine within the meaning of this Chapter, except as hereinafter stated, who holds himself out as being able to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical condition or who shall offer or undertake by any means or method to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical condition. * * *"

Your attention is also called to Sections 3402 and 3409, Compiled General Laws of Florida, 1927, with reference to registration of physicians.

In reply I beg to say in my opinion a person not registered as a physician would not be authorized to prepare and sell a plaster for the removal of cancer except upon prescription of a duly licensed and registered physician.

April 1, 1936.

STATE BOARD OF HEALTH—STATE HEALTH OFFICER—
TRAVELING EXPENSES

Dear Sir:

I am in receipt of your letter of the 23rd instant with reference to the State Health Officer availing himself of a certain allotment by the United States Public Health Service for traveling expenses under the Social Security Act of August, 1935, in connection with their State or local health projects. You also enclose copy of Social Security Act budget showing the said sum of \$500.00 allotted as traveling expenses of the State Health Officer from Federal funds. You also advise that these funds are deposited with the State Treasurer. Payment from such funds will, therefore, have to be made upon warrants of the State Comptroller.

You also enclose certified copy of a motion taken from the Minutes of the State Board of Health of a meeting held March 10, 1936, which motion was carried and provided that the State Health Officer be paid 5¢ per mile from Social Security funds when traveling in the performance of his duties as State Health Officer but not in lieu of any other expense allowance paid by the State Board of Health.

Section 242 (1), Compiled General Laws of Florida, 1934 Supplement, provides that the maximum amount be allowed State officers and State employees when traveling on State business hereafter shall be for subsistence not more than \$4.50 per day and the amount to be allowed for

BOARD OF HEALTH

mileage when the State officer or employee is using a privately owned car shall be not more than 5¢ per mile. This statutory limitation is probably a limitation with reference only to State funds.

You attention is now called to Section 4 of the last General Appropriation Act, Chapter 16,772, Laws of Florida, Acts of 1935, reading as follows:

"Federal money appropriated by the Congress of the United States to be used for State purposes, whether by itself or in conjunction with moneys appropriated by the Legislature of this State, is hereby reappropriated as far as may be necessary to the purpose for which the same was made available and in so far as the same is permitted by the Federal Statutes."

You will note that Federal funds are reappropriated by the Legislature *to the purpose for which the same was made available*.

In view of the above it appears that the State Health Officer would be entitled to receive payments from the above sum for traveling expenses allotted by the United States Health Service in excess of the sum allotted by the State for such purposes.

April 8, 1936.

STATE BOARD OF HEALTH—MUNICIPALITIES—
CHAPTER 17,118 OF 1935

Dear Sir:

I am in receipt of your letter of the 2nd instant, making inquiry if our Supreme Court has handed down any decision relating to Chapter 17,118, Laws of Florida, Acts of 1935, (Senate Bill No. 515) which is an Act to promote the public health by authorizing municipalities to construct, extend, operate and maintain waterworks, sewerage systems, etc.

In reply I refer you to the following decisions by our Supreme Court all of which can be seen at any attorney's office with the exception of the last mentioned decision, which has not yet been printed:

Melton v. City of Winter Haven, 163 So. 526;

Herbert v. City of Daytona Beach, 163 So. 565;

Boykin v. Town of River Junction, 164 So. 558;

Bd. Co. Commrs. Pinellas Co., v. John R. Herrick, relating to Chap. 17,644 of 1935. (Opinion filed 3/31/36)

BOARD OF HEALTH

April 2, 1936.

STATE BOARD OF HEALTH—JAILS

Dear Sir:

I am in receipt of your letter of the 30th ultimo, the body of which reads as follows:

"We have had several complaints from County and City jails and have started a survey. We find some of these jails in a very insanitary condition. Some of them are fire hazards. One of our sanitary officers reported that he has notified the Chief of Police in one town not to use the jail again, as it was condemned."

"Please let me know just what authority we have in the matter."

In reply your attention is called to the first part of Section 3160, Compiled General Laws of Florida, 1927, reading as follows:

"The State board of health shall have the power to make, adopt, promulgate and enforce rules and regulations from time to time, requiring and providing for the thorough sanitation and disinfection of all passenger cars, sleeping cars, steamboats and other vehicles of transportation in this State, and also of all convict camps, penitentiaries, jails, factories, hotels, schools and other places used by or open to the public; to provide for the treatment, segregation and disinfection of animals having communicably contagious or infectious diseases; * * *"

Your attention is further called to Section 3163 of the same compilation reading as follows:

"It shall be the duty of the State health officer, between the first of November and the first of May of each and every year, and oftener, if deemed necessary by the board, to visit all the cities and towns, or other points where two or more railroads meet, in the State of Florida, which, in the judgment of the board, it may be necessary for him to inspect, and to thoroughly investigate the sanitary conditions of said cities or towns; and he shall have the power, and it shall be his duty, to condemn in any of said cities or towns any sidewalks, pavements, buildings, wharves or other things that in his judgment shall be likely to produce or cause the spread of epidemic diseases; and he shall give notice to the mayor and council of such city or town, or other authority, to repair, remove, cleanse or remedy the same within thirty-six hours, and if the same shall not be done, as so required, it shall be his duty to have the same done himself, and the expense thereof shall be paid out of the health fund herein-after provided, and be afterwards assessed as a tax upon the

BOARD OF HEALTH

assessable property of said city or town, to be assessed by the county assessor upon the notification by the health officers of the amount, and collected by the county collector at the next annual assessment and collection thereafter, said amount so realized to be replaced in the health fund of the State by the proper authorities; Provided, a list and memorandum of property to be condemned shall be made and valuation placed upon the same by three disinterested freeholders, one to be selected by said health officer, one to be selected by the owner of the property or his agent, and the third to be selected by the two freeholders already selected, before being condemned or destroyed; and the value of any private property that may be condemned and ordered to be destroyed by the health officer shall be paid to the owner thereof out of any funds provided and appropriated for the expenses of the State board of health, upon the certificate of said health officer that said property was destroyed, approved by the board of health and endorsed by the president of the board."

January 22, 1936.

STATE BOARD OF HEALTH—VITAL STATISTICS—LEGITIMACY
OF INFANTS

Dear Sir:

I have your letter of the 17th instant; the major portion of the body of which reads as follows:

"Please give us an opinion for procedure on the following which is outlined in a letter from Dr. J. L. Chalker, dated January 11.

On October 24, 1935, a baby was born to Mrs. A.

John Doe is lawfully married to Mrs. A but they have lived apart for the past year.

Mr. B. is lawfully married to Mrs. B but they have lived apart for past year or more.

Mr. B has been living with Mrs. A as man and wife for past year although neither is divorced from original mate. The father of the baby born to Mrs. A is Mr. B.

Divorce proceedings are in process in each of the above cases after which Mr. B and Mrs. A, parents of the baby, are to be lawfully married.

Is this child legitimate? If a child is born in wedlock, is it legitimate and according to the birth certificate, should it be shown to be the child of John Doe and Mrs. A who are legally married?"

BOARD OF HEALTH

In reply I beg to say that in my view a child born in wedlock should be presumed to be the legitimate child of the mother and her then wedded husband should be so registered.

September 27, 1935.

STATE BOARD OF HEALTH—POST-MORTEM EXAMINATION

Dear Sir:

Answering your letter of the 26th instant, I beg to say that the matter of holding post-mortem examinations on dead human bodies is a matter to be decided by the Courts and Court authorities. The State Board of Health may issue permits for disinterment or removal of dead bodies for the purpose of post-mortem examinations.

Further answering your letter with reference to physicians being present at post-mortem examinations your attention is called to Section 8529, Compiled General Laws of Florida, 1927, which provides that whenever a jury of inquest shall deem it necessary to have a physician in attendance to assist them, it shall be the duty of the coroner to summon such physician.

August 9, 1935.

HEALTH—LEPERS—DESIGNATION OF LEPROSARIUM

Dear Sir:

I am in receipt of your letter of the 2nd instant, making inquiry if you have authority to designate the National Leprosarium at Carville, Louisiana, as a suitable place where leper patients of this State may be confined and making further inquiry if you have authority to command the services of a Sheriff, Deputy Sheriff, Constable or City Police in apprehending and detaining these patients and to have them held in a County or City jail.

In reply your attention is called to Section 3164, Compiled General Laws of Florida, 1927, authorizing the State Board of Health to formulate rules and regulations for the preservation of the public health and to meet at any time they may deem necessary to formulate such additional rules and regulations as their experience may suggest. Your attention is further called to Section 3160 of the same compilation authorizing the State Board of Health to make separate orders and rules to meet any emergency not provided for by general rules and regulations for the purpose of suppressing nuisances and communicable, contagious and infectious diseases and other dangers to the public life and health.

BOARD OF HEALTH

Your attention is further called to Section 3304 of the same compilation, reading as follows:

"Whenever the State health officer shall investigate any suspicious case or cases of disease, in accordance with the provisions of section 3303, and shall determine that such disease is contagious or infectious and a menace to the public health of the citizens of the State, then he or his agent shall assume charge and management of all and every such case of contagious and infectious disease. All necessary and legitimate expenses attendant upon all such case or cases of diseases, after the State health officer or his agent shall have investigated and determined the same and assumed management and control, shall be paid out of the public health fund of the State on vouchers approved by the president of the State board of health as now provided by law."

In view of the above, it is my opinion that the National Leprosarium at Carville, Louisiana, may be designated as a suitable place where leper patients of this State may be confined.

As to the second part of your inquiry, I quote you from Section 3148, Compiled General Laws of Florida, 1927, as follows:

"The sheriff and constables of the several counties of this State, and the police officers of the cities and towns of this State, shall be under the control of the said State health officer to enforce and carry out any and all quarantine regulations that he may prescribe, which said regulations shall be immediately published in the most practicable manner in the several counties, cities, towns or other places where quarantine may be established; * * *"

I find no authority for confining such patients in a County or City jail. Your attention is further called to Section 3150, of the above mentioned compilation, which gives the State Health Officer power to make arrests without warrants, for any violation of the quarantine rules and regulations of the State Board of Health after they have been duly promulgated, and authorizing him to deputize sanitary agents for that purpose.

May 7, 1935.

PHYSICIANS AND SURGEONS—EXAMINATIONS—COMMISSIONED
MEDICAL OFFICERS IN U. S. ARMY AND NAVY

Dear Sir:

I have your letter of the 2nd instant, requesting my interpretation of that part of Section 3416, Compiled General Laws of Florida, 1927, reading as follows:

BOARD OF HEALTH

"This Chapter shall not be construed to affect commissioned medical officers *serving* in the United States Army, Navy or Public Health Service while so commissioned * * *."

Your inquiry is whether a retired medical officer of the United States Army or Navy is entitled to be licensed by the State Board of Medical Examiners to practice medicine in Florida without an examination.

You will note that I have underscored the word "*serving*" in the above quotation from Section 3416. In my opinion the above quoted provision of said Section 3416 relates to commissioned officers in the United States Army and Navy when in active service and does not apply to them when they have retired from active service in the Army or Navy.

It is, therefore, my opinion that under said statute such officer would not by virtue of such position be entitled to exemption from examination.

March 16, 1935.

STATE BOARD OF HEALTH—DRUGS—NARCOTICS

Dear Sir:

I am in receipt of your letter of the 13th instant, making several inquiries with reference to drugs and narcotics.

Your first inquiry is as to whether it is unlawful for places to compound, prepare and sell at wholesale medicinal preparations without the supervision of a registered Florida pharmacist. In reply I beg to refer you to Sections 3523 and 3527, Compiled General Laws of Florida, 1927, and Section 3529, Compiled General Laws of Florida, 1934 Supplement, or Chapter 13,757, Acts of 1929. It is not clear as to whether the statutes prohibit the compounding and sale at wholesale of medicinal preparations without the supervision of a registered pharmacist, but in my view the statutes may reasonably be construed to contain such a prohibition.

Your second inquiry relates to retail druggists failing to secure from the State Board of Health a State Retail Narcotic License. You further ask what legal steps may be taken to prosecute in such cases and if such narcotics may be seized. In reply to this inquiry your attention is called to Chapter 16,087, Acts of 1933, known as the Uniform Narcotic Drug Act. I refer you to Section 3 which provides that no person shall manufacture, compound, mix, grow, produce or prepare narcotic drugs without having first obtained a license from the State Board of Health. I also refer you to Section 21 providing a penalty for the violation of any of the provisions of said Act. I also refer you to Section 14 providing for the forfeiture of narcotic drugs coming into the custody of a peace officer. I find no provision in the said Act for search and seizure. I would suggest that a warrant first be procured before any officer attempts to make a search or seizure.

BOARD OF HEALTH

You mention the fact that the Uniform Narcotic Drug Act does not provide any authority for an Inspector or agent to make arrests or bear arms. You make inquiry if the Governor or any other Department may confer upon any officer police authority. In reply I will say I do not know of any authority resting in the Governor or any Department to confer police authority upon such officers. You make further inquiry as to how the Inspectors and agents may be able to bear arms legally. Answering this question I beg to say I do not know of any authority for such Inspectors or agents to carry arms without having first procured a license from the County Commissioners of the respective counties of the State under the provisions of Sections 7202 and 7203, Compiled General Laws of Florida, 1927, unless they should procure commissions as Deputy Sheriffs.

February 25, 1935.

STATE BOARD OF HEALTH—SALE OF BIOLOGICALS BY STORES
NOT REGISTERED AS DRUG STORES

Dear Sir:

I am in receipt of your letter of the 21st instant, making inquiry if it is unlawful for a store not registered as a drug store and not under the supervision of a registered pharmacist to sell biologicals in the original package of the manufacturer. By "biologicals" I assume you have reference to serums or vaccines.

In reply your attention is called to Section 3529, Compiled General Laws of Florida, 1927, as amended by Chapter 13,757, Acts of 1929, and as construed by our Supreme Court in the case of *Ex Parte Geo. Sarros*, 156 So. 396. I also refer you to Section 3531, Compiled General Laws of Florida, 1927, the last sentence of which reads as follows:

"The provisions of this law shall not apply to stores or places of business where patent and proprietary medicines or common household remedies are sold in the original package."

Under the above quotation from Section 3531 and under the decisions of our Supreme Court in the above mentioned case of *Ex Parte Geo. Sarros*, it does not appear that it would be unlawful for a store not registered as a drug store and not under the supervision of a registered pharmacist to sell biologicals, such as serums and vaccines in the original package of the manufacturer.

BOARD OF HEALTH

February 25, 1935.

VITAL STATISTICS, BIRTH CERTIFICATE, COPIES

Dear Sir:

I acknowledge receipt of your letter of the 23rd instant, enclosing birth certificate No. 6459 of _____ to which is attached purported copies of affidavits showing the place of births of said _____ to have been Havana, Cuba, instead of Tampa, Florida.

You request my opinion as to whether it is the proper procedure to have these affidavits attached to the birth certificate and become part of the original record. They are no part of the original record, and cannot be considered or treated as such. I see no objection, however, to their being received and kept in the file with the birth certificate, for the information of the Department or anyone who is entitled to such information.

You also request my opinion as to whether the State Board of Health is authorized to refuse to issue certified copies of birth certificates, except in case the record is needed for Court or for other purposes to prove that the record is false.

Section 3291 of the Compiled General Laws of Florida 1927, provides:

"The State Registrar shall, upon request, supply to any applicant a certified copy of the record of any birth or death registered under the provisions of this Chapter, for the making and certification of which he shall be entitled to a fee of fifty cents, to be paid by the applicant, * * *."

Then follows provision that such certified copy shall be prima facie evidence in all courts and cases of the facts therein stated. The provision for furnishing such certified copies is rather broad, and is not limited to any particular purpose.

It is my opinion, therefore, that when application is made for such certified copy, it is the duty of the State Registrar to furnish same upon payment of the statutory fees.

February 18, 1935.

STATE BOARD OF HEALTH—COMPETITIVE BIDS FOR REPAIR
OF STATE BOARD OF HEALTH BUILDINGS*Dear Sir:*

I am in receipt of your letter of the 16th instant, making inquiry if it is necessary to have competitive bids for the repair on State Board of Health buildings and if so, whether it will be necessary for you to

BOARD OF HEALTH

advertise for such bids. You also enclose copy of a letter, under date of the 15th inst., from Hon. _____, Attorney of Jacksonville, advising you in the premises and also suggesting that if your Board has any doubt of the propriety of a public letting, that the matter be submitted to this office.

In reply I beg to say I find no statute which requires the State Board of Health to advertise for bids for repairs to its buildings. In this connection, however, I beg to say I agree with the suggestion of Mr. _____ contained in the second paragraph of his letter reading as follows:

"If I had this responsibility I would require public bidding in such manner that all responsible contractors desiring to do so would have an opportunity to submit their bids. In the absence of a public letting and fair competition, there is possibility of criticism, which might not be at all justified but which would exist."

Your attention is also called to Section 5397, Compiled General Laws of Florida, 1927, with reference to the building or repair of public buildings and providing that before commencement of such work the contractor should execute the usual penal bond with good and sufficient sureties with the additional obligations that such contractor shall, promptly, make payments to all persons supplying him with labor, material and supplies used directly or indirectly by said contractor in the prosecution of the work provided for in said contract.

January 9, 1935.

STATE BOARD OF HEALTH—MOSQUITO CONTROL DISTRICTS,
POWERS, EXPENSES

Dear Sir:

I am in receipt of your letter of the 18th ultimo, relative to Chapter 13,570, Acts of 1929, pertaining to mosquito control districts and being Sections 4053 (1) and 4053 (27), Compiled General Laws of Florida, 1934 Supp. Your letter contains five questions, as follows:

1. "Under Section 12, are the County Commissioners as Commissioners of the anti-mosquito district, entitled to an allowance of 10¢ per mile each way for attendance at meetings of the commission?"
2. "Section 13, provides that the State Health Officer or his appointee shall be an ex official member of any Board created under this Act or exercising the function of the same. As an ex-official member of this Board would the State Health Officer or his appointee have the same vote and au-

BOARD OF HEALTH

thority as members of the Board of County Commissioners who are under this Act, exercising the function of the Commissioners of the anti-mosquito district?

3. "Is it necessary that the Board set specific duties for the regular monthly meetings, and that all members of the Board, including the State Health Officer be advised as to special meetings? Section 14, provides that the time and place of said regular meetings shall be on file in the Engineering Bureau of the State Board of Health.
4. "As a member of this Board would the State Health Officer or his appointee be entitled to mileage in attending the meetings of the Board?
5. "Under Section 20, would you say that the appointment of a superintendent not acceptable to the State Board of Health would be in compliance with the law?"

Answering your first question, I beg to say that under the provisions of Section 12 of said Act the County Commissioners performing the duties of the Board of Mosquito Control District are entitled to 10¢ mileage each way for attendance at meetings held solely for the purposes of mosquito control districts but if their duties with reference to such district are performed at a meeting of the Commissioners held for the performing of their regular duties as County Commissioners, I do not think they would be entitled to this extra mileage.

Answering your second question, I refer you to Section 5 of said Act which provides in certain counties that all the rights, powers and duties of a Board of Anti-mosquito Commissioners shall inhere or reside in the Board of County Commissioners of the County. The Board of County Commissioners is a constitutional body, composed of five members, and I do not think it is within the province of the Legislature to add an additional member to such Board. Neither do I think it is within the province of the Legislature to delegate to the State Health Officer the power to appoint any person to be a member of such Board.

Answering your third question, I beg to say under the provisions of Section 14 of said Act the Board is required to hold regular monthly meetings and special meetings as needed, and the time and place of said regular meetings are required to be on file in the office of the Engineering Bureau of the State Board of Health. Since under the provisions of Section 20 of said Act the plan of procedure of the Board is required to be in such detail as may be prescribed by the State Board of Health and since the State Health Officer is the administrative officer of the State Board of Health, I think it would be very proper for the said Board to advise the State Health Officer in reasonable advance of all special meetings of said Board, together with the matters proposed to be considered at such meetings, as well as all regular meetings, though in my opinion the statute does not require such notice.

BOARD OF HEALTH

My answer to Question 2 above precludes the necessity for answer to your fourth question.

Answering your fifth question I beg to say in my opinion the statute does not specifically require the Board to appoint a superintendent or field director acceptable to the State Board of Health, but since under Section 20, above referred to, the plan of procedure and operation of the Board must be that as may be prescribed by the State Board of Health and no procedure, work or contract is allowed to be done or entered upon which is not approved by the State Board of Health, it is my opinion that the Board of County Commissioners should not employ a superintendent or inspector unless such employee is acceptable to the State Board of Health.

December 29, 1936.

REGISTRAR OF VITAL STATISTICS—PAYMENT OF FEES FOR
CERTIFIED COPIES OF BIRTH CERTIFICATES

Dear Sir:

This is in reply to your letter of December 23rd.

It appears from the enclosed correspondence that the statutory fees for furnishing certified copies of birth certificates provided for under Section 3291, Compiled General Laws of Florida, 1927, were waived until March of 1936.

It appears that application has been made since that time for a certified copy of a birth certificate filed prior to March, 1936. You request my opinion as to whether or not such an applicant should be required to pay the statutory fee.

It is my opinion that the applicant should be required to pay the statutory fee. The waiver of such fee relates to the time when the certified copy was requested and not to the time of filing the original birth certificate.

SECTION 2

RACING COMMISSION

May 8, 1936.

STATE RACING COMMISSION—APPORTIONMENT OF FUNDS
TO COUNTIES*Dear Sir:*

In your letter of the 8th inst., you request my opinion as to whether it is within your power legally to comply with the recommendation of the State Racing Commission, as made in the attached telegram from Honorable Walter H. Donovan, Secretary, dated May 5, 1936. The telegram, which is addressed to you and signed "State Racing Commission W. H. Donovan Secy.", is as follows:

"The Racing Commission will not need all of the ten per cent allotted to it from this years revenue stop forty thousand dollars will be ample for operations balance of year therefore recommend all monies in excess this amount be distributed to counties.

Section 12 of Chapter 14832, Laws of Florida, Acts of 1931, requires the State Treasurer, after the payment of all salaries and expenses of the State Racing Commission, for each fiscal year, to retain 10% of the amount remaining in the hands of the State Treasurer in his capacity as Treasurer of the Commission, to the credit of the Commission to meet expenses accruing before further monies are received under said Act and that all the balance of said money be equally apportioned to the several counties. It is apparent that the requirement for retaining 10% to the credit of the Commission to meet expenses accruing before further monies are received under said Act, was to insure the operation of the Department or Commission created by the Act, and I am sure that the Legislature never intended to create a surplus in said fund beyond the requirement of salaries and expenses of the Commission. The Commission should be, and no doubt is, in position to state from past experience its needs to cover expenses accruing before further monies are received and it is my opinion that you would be justified in apportioning to the counties any amount now on hand to the credit of the Commission in excess of the amount estimated to be necessary for operating expenses for the balance of the year.

RACING COMMISSION

February 8, 1936.

RACE TRACK MONEY UNDER CHAPTER 17,215, ACTS OF 1935, TO
BE DISTRIBUTED ONE-HALF TO BOARD OF COUNTY COM-
MISSIONERS AND ONE-HALF TO BOARD OF PUBLIC
INSTRUCTION*Dear Sir:*

I have your letter of February 7th, which reads as follows:

"Section 12 of Chapter 14832, Laws of Florida, Acts of 1931, as amended by Chapter 16113, Laws of Florida, Acts of 1933, provides that the part of the race track money to be distributed shall be divided into as many equal parts as there are Counties in the State and one part thereof shall be remitted to each County, which means to the Board of County Commissioners of each County.

Section 1 of Chapter 17215, Acts of the 1935 Legislature, provides that in all counties in the State of Florida being of population of not less than four thousand one hundred and twenty (4120) and not more than four thousand one hundred and thirty (4130) according to last Federal Census, 50% of all funds received by such counties under the provisions of Chapter 14832, Laws of Florida, Acts of 1931, known as the "race track money" shall be, and the same is hereby allocated to the general school funds of such County Board of Public Instruction.

Please give me your opinion as to whether or not Section 1 of Chapter 17215 requires the Comptroller to draw one warrant in favor of the Board of County Commissioners for 50% of the distribution and one warrant to the Board of Public Instruction for 50% of the funds being distributed or should the warrant be made for the total amount of funds being distributed to the Board of County Commissioners of this particular County."

It was the intention of the Legislature as expressed in Chapter 17,215, *supra*, to appropriate to the Board of Public Instruction (for specified purposes) of the Counties affected 50% of all race track money allocated to these Counties. No useful purpose can be served by sending the money of the Board of Public Instruction to the Board of County Commissioners who in turn would be required to pay it over to the Board of Public Instruction.

It is my opinion that in distributing the race track money belonging to the Counties affected by Chapter 17215, *supra*, you should draw two warrants for each County, one warrant for 50% of the fund to the Board of County Commissioners and the other warrant for 50% of the fund to the Board of Public Instruction.

RACING COMMISSION

February 7, 1936.

DISTRIBUTION OF RACE TRACK MONEY TO VOLUSIA, PALM
BEACH AND ESCAMBIA COUNTIES FOR 1936 TO BE MADE
TO BOARD OF COUNTY COMMISSIONERS OF
THESE COUNTIES*Dear Sir:*

I have your letter of February 5th, requesting my opinion as to whether you should distribute the race track money belonging to Volusia, Palm Beach and Escambia Counties to the Board of County Commissioners or to the Board of Public Instruction of these Counties.

Section 12 of Chapter 14,832, Laws of Florida, Acts of 1931, as amended by Chapter 16,113, Laws of Florida, Acts of 1933, provides that the part of the race track money to be distributed shall be divided into as many equal parts as there are Counties in the State and one part thereof shall be remitted to each County, which means to the Board of County Commissioners of each County.

Chapter 16,129, Laws of Florida, Acts of 1933, and Chapter 17,186, Laws of Florida, Acts of 1935, undertook to direct the payment of the race track money of Volusia, Palm Beach and Escambia Counties to the Board of Public Instruction of these Counties. These two laws were declared unconstitutional and void by Circuit Judge E. C. Love on August 2, A. D. 1935, in the case of VOLUSIA COUNTY, ET AL., versus KNOTT, ET AL. The order of Judge Love has not been reversed and is now effective.

In view of the above, it is my opinion that you should pay to the Board of County Commissioners of Volusia, Palm Beach and Escambia Counties all race track money due these Counties under Section 12 of Chapter 14,832, supra, as amended by Chapter 16,113, supra.

December 17, 1935.

"ESTABLISHED ADMISSION PRICE" UNDER SECTION 9, CHAPTER 17,276, ACTS OF 1935, INCLUDES CHARGES MADE FOR ADMITTING PERSON TO RACE TRACK AND CHARGES FOR ACCOMMODATIONS THEREIN, SUCH AS BOX SEAT, RE-SERVE SEAT OR SEAT IN CLUB HOUSE

Dear Sir:

I have your letter in which you state the following:

"A question has arisen regarding Chapter 17276, Acts of 1935, Section 9, on which I respectfully request your opinion. The question involves the interpretation of that part of Section 9 that reads as

RACING COMMISSION

follows: 'In addition to the aforesaid taxes, each person, association or corporation authorized to conduct race meetings under this Act shall collect from each person attending such races fifteen per cent (15%) of the established admission price or the sum of ten cents from each person attending such race meeting, whichever sum is greater, as an admission tax, and shall pay to the State Treasurer the said tax.'

"The question is what is an established admission price? We find that some race tracks charge \$1.00 as general admission, which entitles the purchaser to a seat in the grandstand. The track collects and pays the State \$.15 on this admission price. After the purchaser has gained admission to the grandstand, he decides he wants superior accommodations and purchases a box seat, reserved seat, or seat in the club house by paying the difference between the general admission price of \$1.00 and the established price for these superior accommodations.

"The race track collects no tax on this difference, claiming that the State is not entitled to the 15% on this difference in cost for the superior accommodation purchased after the party has gained admittance. However, had the party paid the admission price for the superior accommodations in the first instance, i.e., when he is first admitted, the race track collects the full 15% and remits it to the State."

From a reading of Chapter 17,276, *supra*, it is clear that it was the intention of the Legislature to place a tax on the charges made for admission to a race track, including whatever charge may be made for the various types of accommodations furnished by the track.

It is my opinion that all charges made for admission to the race track, including charges made for the various types of accommodations furnished by the track, such as grandstand, reserve seat, box seat or seat in club house, or other like accommodations, are to be considered under Section 9 of Chapter 17,276, *supra*, as the "established admission price" and the tax must be paid thereon.

November 27, 1935.

STATE RACING COMMISSION—APPLICABILITY OF STATE RACING
LAWS TO PROPERTY OWNED BY THE UNITED STATES
AND USED FOR NAVAL AID STATION

Dear Sir:

This is in response to inquiry under date of November 13, 1935, from State Racing Commissioner, ———, in which my opinion is asked on the question of whether or not the laws establishing the State Racing Commission and governing racing meets in this state, apply to the Naval Air Station at Pensacola, the same being located on land owned by the Federal government for naval purposes.

RACING COMMISSION

It is my opinion that the said Racing Act does not apply to property which has been reserved by or ceded to the United States government for naval purposes. See Article I, Section 8, Constitution of the United States; Sections 5, 6, 7 and 8 C. G. L., 1927, *Murray vs. Joe Ger-rick & Co.*, 291 U. S. 315, 54 Sup. Court, 432, 78 Law. Ed. 321, and cases cited. See, also, *Valverde vs. Valverde*, decided November 19, 1935, by Supreme Court of Florida.

July 2, 1935.

STATE RACING COMMISSION—APPLICATION OF MIAMI
JAI-A-LAI, INC.

Dear Sir:

I am in receipt of your letter of the 27th ultimo, enclosing application of Miami Jai-a-Lai, Inc., for permit to operate a fronton.

Enclosed find said application returned herewith and I call your attention to the failure of the application to show the residence of the officers, stockholders and directors of said corporation as required by Section 3 of Senate Bill No. 490, Chapter 17074, Acts of 1935.

Your attention is further called to the failure of the application to show the exact location or place where applicant desires to operate a fronton. If it is a subdivision of a city or town the name of the town should be given. If it is a subdivision of land outside of the city or town the name of the county should be given. A recital that plat is recorded in the Public Records of Dade County, Florida, is not positive evidence that the land is located there.

Your attention is further called to page 3 of the application giving the name, color and residence of directors, of the applicant corporation instead of the name and address of the officers, directors and stockholders of the owners of the property. In this connection it is noted that the statute says "owners or lessee." Reading the statute as a whole, I am satisfied it was the intention of the Legislature to say "owners or lessor."

It would be well for said application to show that the location is not within 1000 feet of any existing church or public school. See Section 9 of the Act. It might be well also for the application to show whether elections have heretofore been held under Chapter 14,832, Acts of 1931, in which a majority of the electors voted in favor of the operation of more than one horse or dog race track. See Section 10 of the Act. Where applications are executed by a corporation, it is well to have the same not only signed by the President, but attested by the Secretary with an imprint of the corporate seal.

RACING COMMISSION

June 14, 1935.

STATE RACING COMMISSION—JAI-A-LAI

Dear Sir:

I have your letter of the 7th instant, making inquiry if the State Racing Commission has any discretion with reference to granting permits to operate a fronton for the exhibition of the Spanish ball game called Jai-a-Lai or Pelota.

Senate Bill No. 490, Chapter 17074 of the 1935 Legislature provides for the licensing and taxing of such exhibitions and that the operation of such frontons shall be under the supervision of the State Racing Commission.

Section 3 of said Act provides that the State Racing Commission shall carry out the provisions of the Act and also sets forth the requirements for making application for a permit to operate such a fronton. Section 9 of said Act provides that no permit shall be issued for the operation of any such fronton to be constructed or operated within one thousand feet of any existing church or public school.

Section 10 of said Act provides among other things the following:

"All other pertinent provisions of Chapter 14832, Acts of Florida, 1931, dealing with the powers, duties and liabilities of the State Racing Commission and of the operators of horse or dog racing tracks not inconsistent with the express provisions of this Act shall be construed to relate and govern the State Racing Commission and/or the operators of any Fronton under the provisions of this Act are fully as if the same were herein expressly set out."

House Bill No. 1125, Chapter 17276 of 1935 amends numerous Sections of the original Racing Act, Chapter 14,832, Acts of 1931. Such amendments, however, may be disregarded in construing Senate Bill No. 490 for the reason that Senate Bill No. 490 adopted specifically Chapter 14,832 of 1931 as it was originally passed. The general rule is that the amendment or repeal of an adopted statute will not affect the statute containing such adoption. See *State ex rel. Murphy v. Harlee, et al.*, 100 Fla. 1562, 131 So. 866; *Van Pelt v. Hilliard*, 75 Fla. 792, 78 So. 693; 25 R. C. L. 907, Statutes 160.

Under the provisions of Senate Bill No. 490 it does not appear that the State Racing Commission has been given general discretion to refuse to grant a permit for the operation of such frontons, provided the applications have been made in conformity with the provisions of the statute and such fronton is not to be constructed or operated within one thousand feet of any existing church or public school.

RACING COMMISSION

Section 5 of Chapter 14,832 appears to be the only section in said Act which could have any bearing upon your inquiry. Said Section provides for the State Racing Commission "to consider and grant permits applied for."

In the case of State ex rel. Pinellas Kennel Club, Inc., vs. State Racing Commission, 116 Fla. 143, 156 So. 317, a writ of mandamus was applied for on the theory that the granting of permits, when applications are made in proper form, is a non-discretionary mandatory duty on the part of the State Racing Commission under Chapter 14,832. The Court, however, decided the case on another basis and used this language: "In the present case the Court is of the opinion that no sufficient legal cause for denial of the permit has been made to appear, conceding arguendo that the claimed discretion on the part of the State Racing Commission to deny permits, under certain circumstances, exists."

In the case of State ex rel. Dade County Kennel Club, Inc., v. State Racing Commission, 116 Fla. 144, 156 So. 343, mandamus proceedings were brought to compel the State Racing Commission to grant to the Dade County Kennel Club, Inc., a racing permit in accordance with an application for same, which was alleged to have been duly submitted to the Commission within the time provided by law and by said Commission denied. The Court held in this case that the Relator was not entitled to a peremptory writ of mandamus of the character sought for the reason that the corporation applying for the permit had been organized as a non-profit corporation and that the corporation was not authorized to engage in a business for profit, and that the granting of such a writ would prove without beneficial results and fruitless to the Relator.

From the decisions of our Supreme Court in the above two cases mentioned, it appears that the State Racing Commission has very limited, if any, general discretion with reference to granting permits to operate a fronton for the exhibition of the Spanish ball game called "Jai-a-Lai or Pelota." Under Senate Bill No. 490 of 1935 and the adopted statute, Chapter 14,832 of 1931, the discretion or authority of the Commission, with reference to granting permit so applied for, appears to be limited practically to a determination as to whether the application is in due form, has been filed in due time and the fronton is not to be constructed or operated within one thousand feet of any existing church or public school.

April 11, 1935.

**FLORIDA STATE RACING COMMISSION—REVOCATION OR
SUSPENSION OF LICENSES—EVIDENCE NECESSARY**

Dear Sir:

You have handed me transcript of the testimony taken in connection with the investigation by the State Racing Commission of the operation

RACING COMMISSION

of mutuel rooms at one of the racing plants, which investigation resulted in a hearing at which the testimony in evidence was produced, transcript of which you have furnished me. As the result of this hearing you suspended or revoked the licenses of the manager and certain operators in the mutuel room affected.

Your specific inquiry concerns itself with the degree of proof necessary as a predicate for the action of the Commission in this regard.

I do not understand that I am called upon to give you my opinion as to what the evidence shows and, indeed, I hardly could consider such to be my province. In answer to your inquiry, I, therefore, advise that the evidence in such cases should be such as would convince a reasonably prudent man handling matters of this importance that the party involved committed the fraudulent act. The Commission is the sole judge of the credibility of witnesses and the weight to be given their testimony. It is not necessary that the evidence be such as to convince you beyond any reasonable doubt as this is not a criminal prosecution in any sense of the word.

I hand you herewith transcript of the testimony which you furnished me.

SECTION 3

HOTEL COMMISSION

September 19, 1935.

HOTELS AND RESTAURANTS—LICENSE FEES WHICH MAY BE
CHARGED BY INCORPORATED CITIES AND TOWNS*Dear Sir:*

This is in response to your inquiry wherein you ask whether or not an incorporated city or town may charge an occupational license fee for restaurants in excess of fifty per cent of the State license fee.

It is my opinion that if the charter of the city or town authorizes it to levy a tax or fee upon occupations, that it may do so, even though the amount charged is in excess of fifty per cent of that fixed for the State license fee. Section 1051, Compiled General Laws, 1927, contains the following:

"Provided, that incorporated cities and towns, may impose such further license taxes of the same kind upon the same subjects as they may deem proper, unless otherwise provided in this Chapter, but the license taxes so imposed shall not exceed fifty per cent of the State license tax, *except as otherwise authorized by law.*"

It is thus seen that if otherwise authorized by law, to-wit: by its charter, the city is not bound by the fifty per cent limitation. See *Canova versus Williams*, 41 Fla. 509, 27 So. 30.

July 16, 1935.

STATE HOTEL COMMISSION—CHAPTER 16,042 OF 1933—POSTING
PRINTED COPIES OF PARTS OF LAW*Dear Sir:*

I am in receipt of your letter of the 9th instant, referring to Chapter 16,042, Laws of Florida, Acts of 1933, creating the Hotel Commission and to hotels. You make inquiry if it is mandatory that certain Sections of the law be posted in each bed room, as well as in some public place such as the office or hall of the hotel.

In reply your attention is called to Section 38 of said Act which provides that every proprietor or manager of a hotel, apartment house, rooming house or restaurant is authorized and empowered to prescribe and establish reasonable rules and regulations for the government and management of the hotel, apartment house, rooming house or restaurant, which said rules and regulations shall be printed in the English language and posted, together with copy of Sections 40, 45 and 46 in each bed room and in some public place, such as the office or hall. Under the above mentioned Section it is necessary to post in each bed room as well as in some public place, such as the office or hall, all Sections of the Act required by said Section 38 to be so posted.

SECTION 4

NURSES, BOARD OF EXAMINERS

December 23, 1935.

~~NURSES—QUALIFICATIONS—EMPLOYMENT OF ATTORNEY~~*Dear Sir:*

I have your letter of the 19th instant making certain inquiries with reference to Chapter 7831, Laws of Florida, Acts of 1919, now Sections 3506 to 3521, Compiled General Laws of Florida, 1927, relating to the powers and duties of the State Board of Examiners of Nurses.

Your inquiries may be stated as follows:

1. Has your Board authority to employ an attorney to defend suits against the Board?
2. Has your Board authority to make rules and regulations for training schools for nurses in this State, particularly with reference to educational requirements for entrance?
3. Has your Board authority to refuse to register nurses registered in other states who fail to evidence the educational requirements of the Board?

Answering your first inquiry I beg to say in my opinion your Board would be authorized to employ an attorney to defend suits against the Board and pay a reasonable compensation for such service. I may say in this connection that should you need any general legal advice or construction of statutes in regard to your powers and duties this office will be glad to advise you upon request.

Answering your second inquiry I beg to say in my opinion your Board has authority to make rules and regulations for training schools for nurses in this State and to prescribe educational requirements for entrance to such schools. See Sections 2, 3 and 6 of Chapter 7831, above mentioned, or Sections 3507, 3508 and 3513, Compiled General Laws of Florida, 1927.

Answering your third inquiry I beg to say in my opinion your Board has authority to refuse to register nurses registered in other States failing to evidence the educational and training requirements of the Board. See Section 7 of said Chapter 7831, now Section 3514, Compiled General Laws of Florida, 1927, together with the Sections cited in the preceding paragraph.

BIENNIAL REPORT OF THE ATTORNEY GENERAL 495
NURSES, BOARD OF EXAMINERS

June 19, 1936.

NURSES—ENFORCEMENT OF STATUTORY PROVISIONS
REQUIRING REGISTRATION

Dear Sir:

This is in reply to your letter of June 10th concerning the enforcement of the provisions of law requiring registration of nurses.

The provisions for the registration of nurses are set forth in Sections 3497 to 3521 inclusive, Compiled General Laws of Florida, 1927. I further call your attention to Sections 7708 to 7710 inclusive, Compiled General Laws of Florida, 1927, which provide that violations of the provisions of law dealing with the registration of nurses shall be punishable as misdemeanors. Inasmuch as violations of statutes are made criminal offenses, the proper officer to prosecute violators would be the County Prosecuting Attorney or County Solicitor in the respective counties of the state.

SECTION 5

BOARD OF BARBER EXAMINERS

September 1, 1936.

FLORIDA BARBER LAW—CHAPTER 14650, ACTS OF 1931—FEE FOR
RESTORATION OF CERTIFICATE*Dear Sir:*

I have your communication of August 31, 1936. You ask that I advise you upon the following question:

A registered barber fails to pay, on or before July 1st, or within the month of July, of a given year, the fee required by the above statute, in Section 17 thereof, for the renewal of his certificate of registration to practice. During the day of August 1st of said year, he tenders to your Board \$3.00, and asks that his certificate to practice be renewed. May such certificate be renewed upon the payment at such time of said fee, or is it necessary that the barber in question pay the \$5.00 fee provided in said Section 17, for the restoration of a certificate?

The Florida barber law is Chapter 14650, Acts of 1931. Section 14 provides that every registered barber who continues in active practice or service "shall annually, on or before July First of such year, renew his certificate of registration and pay the required fee." It further provides that every certificate of registration which has not been renewed *during the month of July* in any one year, shall expire on the first day of August in that year." I have supplied the emphasis indicated.

The section referred to further provides that a registered barber whose certificate of registration has expired, may have his certificate restored immediately upon payment of the restoration fee.

Section 17 of the Act deals with fees and provides that the fee to be paid for the renewal of a certificate to practice barbering is \$3.00; and that the fee to be paid for the restoration of a certificate to practice barbering is \$5.00.

From the foregoing, it is plain that, regardless of the fact that the certificate of registration in question only expires on the 1st day of August, there is nothing which the registered barber may do, after the month of July, to prevent such expiration. The law plainly provides that if the certificate has not been renewed during the month of July, it shall expire on August 1st. Therefore, I am of opinion that you would not be authorized, under the circumstances, to renew such certificate upon the payment of \$3.00. Of course, once the certificate has expired—and the date of expiration is August 1st—such registered barber may secure its restoration thereafter, upon payment of the \$5.00 fee, provided in Section 17 of said Act.

BOARD OF BARBER EXAMINERS

August 2, 1935.

**STATE BOARD OF BARBER EXAMINERS—METHOD OF
PAYMENT OF BILLS**

Dear Sir:

I have your letter of the 25th ultimo enclosing a letter from Secretary of the State Board of Barber Examiners. You make inquiry as to whether the Barber Board may draw check direct upon the State Treasurer without first having requisition therefor approved by the Comptroller.

Chapter 14,650, Laws of Florida, Acts of 1931, is the Barber Act. Section 22 of said Act reads as follows:

"All moneys received by the Board under this Act shall be paid to the Secretary of the Board, who shall give a receipt for the same and shall at the end of each month report to the State Comptroller the total amount of money received by him on behalf of the Board from all sources, and shall at the same time deposit with the State Treasurer the entire amount of such receipts, and the State Treasurer shall place the money so received in a special fund known as the 'State Board of Barber Examiners' Fund,' which fund is hereby created. Such fund shall be expended in accordance with law for all necessary and proper expenses in carrying out the provisions of this Act upon proper claim approved by said Board or a finance committee thereof, and is hereby annually appropriated for such purposes."

Senate Bill No. 749 of 1935 is an Act granting additional powers to the State Board of Barber Examiners, Section 16 of which Act reads as follows:

"All expenses incident to the administration of this Act shall be paid from the funds of the State Board of Barber Examiners of Florida in the manner and form now governing other expenditures of that Board."

In reply I call to your attention certain provisions of the State Constitution as follows:

Article IX, Section 4, provides that no money shall be drawn from the Treasury except in pursuance of appropriations made by law.

Article IV, Section 23, provides that the Comptroller shall examine, audit, adjust and settle the account of all officers of the State and perform such other duties as may be prescribed by law.

BOARD OF BARBER EXAMINERS

Article IV, Section 24, provides that the Treasurer shall receive and keep all funds, bonds and other securities in such manner as may be prescribed by law and shall disburse no funds nor issue bonds or other securities except upon the order of the Comptroller, countersigned by the Governor, in such manner as shall be prescribed by law."

Section 142, Compiled General Laws of Florida, 1927, provides that it shall be the duty of the Comptroller to examine, audit and settle all accounts, claims and demands whatsoever against the State arising under any law or resolution of the Legislature, and to issue his warrant to the Treasurer directing him to pay out of the State Treasury such amount as shall be allowed by said Comptroller thereon.

In view of the above, it is my opinion that the State Board of Barber Examiners may not draw their check direct upon the State Treasurer but requisitions of such Board should first have the approval of the State Comptroller and payment should be made by virtue of the Comptroller's warrants directed to the State Treasurer.

SECTION 6

OPTOMETRISTS
NO CORRESPONDENCE

SECTION 7

LIVESTOCK SANITARY BOARD

July 10, 1935.

**SALARIES—APPROPRIATION—HOUSE BILL NO. 1256,
CHAPTER 16772, OF 1935**

Dear Sir:

I have your letter of the 8th instant making inquiry as to what law governs in the matter of the salary of the State Veterinarian.

In reply I beg to say that Chapter 15,859, Laws of Florida, Acts of 1933, fixed the salaries of certain officers, including the State Veterinarian. However, Senate Bill No. 86, Chapter 17273, Laws of Florida, Acts of 1935, is an Act relating to the State Live Stock Sanitary Board and prescribing the powers and duties of said Board with respect to the employment of a State Veterinarian as an employee of said Board and with respect to said Board fixing the powers, duties and compensation of such Veterinarian, and in the body of said Act the said Board is specifically authorized to fix the compensation of the State Veterinarian.

It is my opinion that Senate Bill No. 86, above mentioned, supersedes Chapter 15,859 of 1933 in relation to the salary of the State Veterinarian.

Enclosed find returned herewith all correspondence attached to your letter.

SECTION 8

RAILROAD COMMISSION

September 9, 1935.

SALARIES OF RAILROAD COMMISSIONERS

Dear Sir:

In your letter of August 1, 1935, you requested my opinion as to the legal salaries of the members of the Railroad Commission. Just shortly after receipt of your letter the matter was presented to the Supreme Court by request of the Governor for an opinion as to his duty in signing salary warrants for said members at the salary rate of \$5,000 per annum. I thereupon deferred the matter of answering your letter until the Supreme Court of Florida should pass upon the matter in response to the executive request therefor.

On August 30, 1935, the Supreme Court rendered an opinion to the Governor on the subject, advising as follows:

"In reply, we respectfully advise that we construe the provisions of Chapter 15859, Laws of Florida, Acts of 1933, as effectively repealing all former legislative acts fixing the salaries of members of the Railroad Commission of the State of Florida. That Act appears to remain in full force and effect in this regard.

"It is, therefore, not your duty to countersign warrants for the payment of the monthly salaries of the Chairman and other members of the Railroad Commission in a larger amount than the sum fixed by statute, Chapter 15859, *supra*."

This settles the question, and I advise the proper amounts to be paid to the members of the Railroad Commissioners as and for their annual salaries to be that fixed by the General Salary Act of 1933, namely Chapter 15859.

SECTION 9

FLORIDA CRIPPLED CHILDREN'S COMMISSION

March 25, 1936.

FLORIDA CRIPPLED CHILDREN'S COMMISSION, SECRETARY, EMPLOYMENT NOT MANDATORY

Dear Sir:

I have your letter of the 24th instant with reference to your Commission employing a Secretary, the body of which reads as follows:

"Section 10 of the Act creating this Commission states that 'Said Commission shall employ a Secretary who shall have the proper knowledge of community organization work—,' but this Commission has never felt the need of such a Secretary, therefore has never employed one.

"We would like an opinion from you stating if it is mandatory that we employ a Secretary even though we do not need such services, or shall we construe this statement to merely give us permission to do so should we feel the need of such services."

In reply, your attention is called to the sixth headnote of the case of Fagan, et al., vs. Robbins, 96 Fla. 91, 117 Sou. 863, reading as follows:

"The word 'shall,' when used by the Legislature to prescribe the action of a court, is usually a grant of authority, and means 'may,' and even if it be intended to be mandatory it must be subject to the necessary limitation that a proper case has been made out for the exercise of the power."

Your attention is further called to "Words and Phrases" defining the word "shall" as follows:

"The use of the words 'may' and 'shall' in a statute is not controlling on question whether statute is mandatory or directory, since either word may be held mandatory or directory, and Courts will consider language used, subject matter, importance of provisions, and object intended to be secured, and ascertain legislative intent."

State v. Christionson, 229 N. W. 313, 179 Minn. 337; Words and Phrases, Fourth Series, Vol. 3, page 482.

"Word 'shall' in statute is imperative where public or persons have rights which ought to be exercised or enforced, but may be held directory only where no right or benefit depends on its imperative use, or permission when necessary to accomplish purpose of legislative act or to sustain constitutionality of statute."

State v. City of St. Louis, 2 S. W. (2d) 713, 318 Mo. 870,

FLORIDA CRIPPLED CHILDREN'S COMMISSION

Words and Phrases, Fourth Series, Vol. 3, page 483.

In my opinion Section 10 of Chapter 13,620, relating to the Florida Crippled Children's Commission, does not make it mandatory upon the Commission to employ a Secretary when not needed. The word "shall" in this particular statute should in my view be construed as "permissive."

September 19, 1935.

**FLORIDA CRIPPLED CHILDREN'S COMMISSION—CARE AND TREAT-
MENT OF HARELIP AND CLEFT PALATE CHILDREN
AND CONGENITAL CATARACT**

Dear Sir:

I am in receipt of your letter of the 15th instant, making inquiry if the Florida Crippled Children's Commission has authority to care for harelip and cleft palate children and congenital cataract.

Chapter 13,620, Laws of Florida, Acts of 1929, is an Act creating the Florida Crippled Children's Commission to provide for the care, treatment and hospitalization of crippled children. Section 1 of said Act defines crippled children as any person of normal mentality under the age of 17 years whose physical functions or movements are impaired by accident, disease or congenital deformity. Harelip, cleft palate and congenital cataract are congenital deformities, and under the above statutory definition of a crippled child it is my opinion that your Commission would be authorized to care for, treat and hospitalize indigent or partially indigent children for said deformities.

July 10, 1935.

FLORIDA CRIPPLED CHILDREN'S COMMISSION—EXPENSES

Dear Sir:

I am in receipt of your letter of the 3rd instant advising that the Florida Crippled Children's Commission has presented for payment certain items of expense which were incurred prior to July 1, 1935, and which exceeds the appropriation for the past biennium. You make inquiry if payment of the same may be made out of the 1935 Appropriation Act, effective July 1, 1935.

Your attention is called to Chapter 13,620, Laws of Florida, Acts of 1929, creating the Florida Crippled Children's Commission and making an appropriation therefor, Section 8 of which reads as follows:

"That the sum of Fifty Thousand (\$50,000.00) Dollars be, and the same is hereby appropriated annually from the General Rev-

FLORIDA CRIPPLED CHILDREN'S COMMISSION

enue Fund for the purpose of carrying out the provisions of this Act."

The above quoted Section appears to be a continuing appropriation and in my opinion the items mentioned in your letter may be taken care of under the same.

January 26, 1935.

FLORIDA CRIPPLED CHILDREN'S COMMISSION

Dear Sir:

I am in receipt of your letter of the 21st instant, making inquiry if there is a State fund to be used for the benefit of crippled persons who are unable to make their living.

In reply I beg to say I do not know of any State fund for said purpose. Chapter 13,620, Acts of 1929, creates the Florida Crippled Children's Commission, which applies only to children under 17 years of age.

SECTION 10

BOARD OF CONTROL (Institutions Higher Learning)

March 26, 1936.

BOARD OF CONTROL, EMPLOYEES, WORKMEN'S COMPENSATION

Dear Sir:

Replying to your letter of the 26th instant, it is my opinion that "State employees" as used in Chapter 17274, Laws of Florida, Acts of 1935, includes persons employed by the Board of Control at the State Institutions of higher learning, and that such employees are entitled to the benefits of said Act under the conditions and upon the terms therein stated.

February 1, 1936.

BOARD OF CONTROL, WORKMEN'S COMPENSATION

Dear Sir:

This is in reply to your inquiry of January 28.

It is my opinion that the Board of Control has authority to approve for payment to the fund for the administrative costs of the Florida Industrial Commission vouchers payable from funds appropriated for necessary and regular expenses of the institutions under the Board's management, as listed in your letter.

It is also my opinion that the Board has authority to pay claims for compensation under the terms of the "Florida Workmen's Compensation Act" to injured employees from the appropriations made for the payment of necessary and regular expenses of the several institutions so listed by you, inasmuch as the Board has chosen to act as a self-insurer as provided in the "Florida Workmen's Compensation Act."

I base my opinion upon the fact that the "Florida Workmen's Compensation Act," which is Chapter 17481, Laws of Florida, Acts of 1935, was approved by the Governor on May 25, 1935, and became effective on July 1, 1935. The said Act was legally enacted as a law prior to the Appropriation Act, Chapter 16772, Laws of Florida, Acts of 1935, which was approved by the Governor on June 10, 1935, and became effective on July 1, 1935. Both of these statutes were passed at the same session of the Legislature and are to be construed together. The "Florida Workmen's Compensation Act" specifically provides in Section 2 that the word "employment" includes employment by the State and all political subdivisions thereof, except officers elected at the polls. In view of these facts expenses accruing under the provisions of the "Florida Workmen's Compensation Act" would be embraced within the provisions appropriating funds for necessary and regular expenses of the Board of Control and the institutions under its control.

August 23, 1935.

BOARD OF CONTROL, TERM OF MEMBERS

Dear Sir:

Replying to your favor of the 19th inst., in which you ask the opinion of this office as to whether or not a member of the Board of Control may act as such after the expiration of the term of his appointment as stated in his commission, I beg to state that Section 775, Compiled General Laws of Florida, providing for the appointment of the members of the Board of Control, provides that

"Their terms of office shall be for four years and until their successors are appointed and qualified."

It is not necessary that the commission should contain a clause to the effect that the incumbent shall hold office until his successor is appointed and qualified. The law fixes this provision and one holding a commission for the four year term or for any unexpired portion thereof shall hold and exercise the functions of the office after the expiration of such term and until his successor is appointed and qualified.

July 11, 1935.

BOARD OF CONTROL, BORROWING MONEY, CHAPTER 16981
OF 1935

Dear Sir:

I have your inquiry as to whether or not Senate Bill No. 1044, known as the "Educational Institutions Act of 1935," enacted by the 1935 Florida Legislature, is valid under the Constitution of the State of Florida.

This Act authorizes the State Board of Control to borrow money from any Federal Agency for the construction of projects, primarily buildings, at the State colleges or universities, and to issue revenue certificates evidencing the obligation of the State Board of Control for the repayment of such funds, and authorizing such Board to repay the money borrowed with interest, over a term of years from the proceeds of the use of the projects constructed with the money borrowed from the Federal agency.

In examining this Act it is to be kept clearly in mind that the Act does not obligate the State Board of Control or any state agency to pledge any funds save those to be derived from the projects constructed with the money borrowed from the Federal agency. Sections 10 and 11 of the Act distinctly and unequivocally disclaim any purpose or permission to obligate the State of Florida in any way for the repayment of such funds from its general revenues, or to pledge the credit of the state for the repayment of such funds.

BOARD OF CONTROL (Institutions Higher Learning)

It would not be suggested that the Act was in conflict with any provision of the Florida Constitution save section 6 of article 9, by which the legislature is forbidden to issue state bonds except for the purpose of repelling invasion or suppressing insurrection.

In numerous cases since the adoption of the Constitution of 1885, our Supreme Court has announced the doctrine that the State shall not either directly or through any agency pledge its credit or issue its binding obligation except for the purposes specified in section 6 of article 9 of the Constitution. Such cases have, however, always related to the issuance of a general obligation of the state payable out of the general revenues of the state bearing interest and payable over a term of years. An instance of such adjudication was the recent case of *Sholtz vs. McCord*, 150 So., 234, decided by the Supreme Court on October 5, 1933. In that case the Board of Commissioners of State Institutions, that is to say, the State Constitutional Board having jurisdiction of the several institutions operated by the state, such as the hospital for the insane and the like, was about to procure from the Federal Government a loan for the purpose of erecting certain buildings at the Florida State Hospital for the Insane and at the Florida State Prison. It was the agreement of the Board of Commissioners of State Institutions "to pay to the United States from State funds a sum of money monthly or annually over a period not exceeding thirty years until the sum to be repaid, with annual interest thereon, shall have been paid." (Per Whitfield, J., 150 So. 236) The Court said:

"Such a transaction and agreement made by a state board for a state purpose would in effect be an attempt to create a binding, continuing, interest-bearing contract obligation of the state to pay money in the future, that would violate the intent of the provisions of section 6, article 9, of the Constitution, that 'the legislature shall have power to provide for issuing state bonds only for the purpose of repelling invasion or suppressing insurrections'".

(Per Whitfield J. 150 So. 236.)

It is clear, however, that the funds with which the loan was to be repaid in this case were "state funds," which means funds derived as revenue of the State of Florida by due process of law.

A case almost identical in principle with the point presented by your inquiry as to the validity of Senate Bill No. 1044 is the recent case of *State vs. City of Miami*, 152 So. 6, decided by the Supreme Court January 22, 1934. In that case the question involved was whether or not certificates of indebtedness issued by the City of Miami "to realize monies to pay for constructing certain additions, replacements, and improvements to the city owned water supply system" were valid. The suggested invalidity of such certificates of indebtedness was that the certificates of indebtedness had not been approved by a majority of the votes cast in

BOARD OF CONTROL (Institutions Higher Learning)

an election in which a majority of the free holders who were qualified electors resided in the City of Miami, participated, as would be required by section 6 of article 9 of the Constitution of the State of Florida, as amended at the 1930 general election, if such certificates of indebtedness were in substance and in fact bonds of the City of Miami. It was admitted that if the certificates of indebtedness were in substance bonds, that is, had the character of bonds, then their issuance would have to be approved by such an election. The question then arose as to whether or not such certificates of indebtedness were bonds of the City of Miami.

The certificates of indebtedness were not payable from the general revenues of the City of Miami derived from taxation, but solely out of the revenues to be derived from the operation of the water plant, with respect to which the money borrowed and evidenced by such certificates of indebtedness was spent. The Court speaking through Chief Justice Davis (152 So., p. 12) said:

" * * * it seems clear that the restrictions imposed on municipalities against the issuance of bonds without an approving vote have no application to that form of municipal financing required to be done in order to keep municipal utilities in operation. So long, therefore, as such financing is limited to the borrowing of money solely on the security of anticipated utility revenues, when the object of the borrowing and the contemplated purpose or intended use of the borrowed funds is confined strictly to a reinvestment of the same in the existing plant through which such funds have been earned, in order to make it more efficient or economical in operation, or to enlarge its usefulness to the municipality, the borrowing is not prohibited by the Constitution." Again the Court said:

"The statute, the resolution of the city commission, and the water revenue certificates contemplates a loan to the city in its proprietary capacity only, such loan to be used in improvements of the water supply system of the city. This loan is to be repaid solely from the net revenues derived from the operation of the property owned by the city for corporate purposes, and not otherwise, it being expressly provided in section 9 of the authorizing resolution that "no taxes shall ever be levied and no moneys shall ever be taken or diverted from any funds of the City for the payment of the principal and interest of Water Revenue Certificates issued hereunder, except as hereinabove expressly provided." (Per Chief Justice Davis, 152 So., p. 13).

The Court summarizing and concluding this significant opinion as follows:

"So the substance of what we decide in this case is that the contemplated certificates of indebtedness issued, or to be issued, by the city of Miami, which are payable out of the income of

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proprietary municipal property possessing a fixed earning capacity, to-wit: a municipal water plant, which said property is to be repaired, reconstructed and improved for the necessary preservation of the facilities of the plant, as well as the incidental protection of the public health and public safety, out of the proceeds derived from the sale of such certificates, and which certificates, according to their expressed phraseology, and according to the statutes and ordinances under which they are authorized and issued, are payable as to both principal and interest solely out of a special fund to be created and established out of the net earnings derived from the operations of said municipal water plant, which constitutes a net revenue derived and to be derived solely from the sale of water, and which certificates do not create, nor purport to create, a general obligation upon, or debt against, the city, and cannot be enforced or collected by levy of an ad valorem, or other municipally imposed tax upon property or business transactions situated or carried on within said city of Miami, or made a charge of any kind upon the property of taxpayers, or upon the tax resources of the city of Miami, are not municipal bonds within the purview of section 6 of article 9 of the Constitution of the State of Florida, as amended in 1930, nor are they "debts" of the city within the purview of the city's statutory debt limit. Such water revenue certificates are not held to be so exempt from the restrictions of the Constitution because they are designated as "certificates" instead of "bonds," but because of the nature of the actual obligation created thereby, and the manner in which payment is to be made and enforced, as hereinabove stated."

This opinion was reaffirmed by the Court on rehearing, and the Court unanimously adhered to the conclusions first arrived at, namely, that the certificates of indebtedness were not bonds of the City of Miami, and, therefore, would not have to be approved by the election provided for by section 6 of article 9 of the Constitution.

This case, in my opinion, is a decisive answer to your inquiry as to the validity of Senate Bill No. 1044, and leads me clearly to the conclusion that the issuance of the revenue certificates contemplated in Senate Bill No. 1044 by the Board of Control payable only out of revenues to be derived from the use of the projects constructed with the money borrowed from the Federal agency, are not bonds or obligations of the State of Florida, which the State is forbidden to issue save upon the condition set out in section 6 of article 9 of the Constitution.

Moreover, this case seems to be supported by the weight of authority in this country, as evidenced by the following decisions:

McClain vs. Regents of the University et al., 124 Oreg. 629, 265 Pac. 412:

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"This is a suit to enjoin the issuance and sale of bonds in the amount of \$400,000 for the construction of a dormitory on the campus of the University of Oregon. The Regents propose to issue and sell these bonds under the authority of Chapter 289, Laws of Oregon for 1927, which provides that the Boards of Regents of the State Institutions are authorized to sell bonds for the construction of dormitories with the only liability against a special fund to be made up exclusively of the net rentals received therefrom. The Board of Regents complied with the requirements of the Act, but the plaintiff contends that the issuance and sale of these bonds creates an indebtedness of the State of Oregon in violation of article 11, paragraph 7 of the Constitution which provides:

'The Legislative assembly shall not loan the credit of the State nor in any manner create any debt or liability which shall singly or in the aggregate with previous debts and liabilities exceed the sum of \$50,000.00.'

We hold that the "Regents of the University" is an agency of the State and that, therefore, an indebtedness incurred by the State University is the indebtedness of the State within the constitutional limitation.

We next inquire whether the legislative act authorizing the construction of a dormitory from net rentals contravenes a constitutional provision relative to a limitation of indebtedness. It does not purport to authorize the Board of Regents to contract any indebtedness other than to pledge on behalf of the University the net income from the rentals of the building. In the event the net income from rentals is not sufficient to pay principal and interest on the bonds there is no resulting liability against the University or the State. The act, therefore, does not contemplate nor provide for the levy of any tax. No violation of the constitutional provision against the indebtedness is involved."

State vs. Regents of the University of New Mexico., 32 New Mex. 428,258 Pac. 412:

"This is a suit for an injunction on behalf of the State by the Attorney General seeking to enjoin the Regents of the University from putting out a bond issue of \$190,000.00 of building bonds. The bonds are proposing to be issued under the provisions of Chapter 47, Laws of 1927, and are in accord with the requirements of the Act. The Attorney General argues that the proposed bonds are in effect the obligation of the State, and as such may be issued only in compliance with the provisions of section 8 of article 9 of the Constitution, which requires that any law authorizing such debt shall provide for an annual tax levy sufficient to pay interest and provide a sinking fund, and each law

BIENNIAL REPORT OF THE ATTORNEY GENERAL
BOARD OF CONTROL (Institutions Higher Learning)

shall be submitted to a vote of the people for approval, neither of which requirements have been complied with. The Court holds the argument unsound, for although the State holds legal title to the lands granted by Congress, there is nothing in the Constitution preventing the State from making the State University the beneficiary of these grants and empowering it to create such use of the proceeds or income therefrom as it may be deemed proper. The University by section 11 of article 12 of the Constitution was made owner of the State Educational Institutions, the income whereof may be used by the University in such manner as a state may by law provide. The transaction contemplated by the University proposes to contract with the bondholders that it will appropriate out of its income sufficient sums of money to pay interest and provide a sinking fund for the retirement of the bonds issued. The University simply agrees to pay out of its income. This will not be an obligation of the State any more than would be the obligation to pay the salaries of the University faculty. The proposed bond issue does not come within article 9, paragraph 8 of the Constitution."

Barbour vs. State Board of Education, 92 Montana 321, 13 Pac. (2d) 225:

"The controversy arose out of the action of the State Board of Education proposing to erect certain buildings to be used as dormitories upon the campus at each of the State institutions. The plan included the borrowing of money sufficient to complete the erection of at least two dormitories, the security for the repayment of which was to consist in the pledging of "net income" from the operation of such dormitories when complete. The Board of Education assumed to act under and by virtue of the provisions of Chapter 94, Laws of 1929, and the Board complied with the requirements of said Act. The plaintiff contends that the Act is null and void and of no force and effect on the ground, first—that it is a wholesale grant of legislative power, article 11, paragraph 11 of the Constitution; second,—that it contravenes section 2 of article 13 of the Constitution, which places a limitation upon the amount of a debt to be incurred without submitting the question to the people at a general election. As to the first contention, we think the correct rule is that if an act but authorizes a board to carry out the definitely expressed will of the legislature, it is not vulnerable to the criticism that it carries a designation of legislative power. At first blush, it might appear that the constitutional limitation to loan the credit of the state might be an obstacle to the upholding of the validity of this Act since it is obvious that the Act does not contemplate that the money is now available, and it makes provision for the borrowing of money for the erection of the buildings mentioned, but by

BOARD OF CONTROL (Institutions Higher Learning)

the very terms of Chapter 94, faith and credit of the State of Montana are not involved in the issuance of the certificates of indebtedness referred to, neither will the taxpayers of the State ever become burdened or called upon to repay the obligations which may be created in furtherance of the plan which the resolution of the Board of Education contemplates. Therefore, the transaction does not, nor does the law offend against these provisions of the Constitution."

Fanning et al. vs. University of Minn., et al., 183 Minn. 222, 236 N. E. 217:

"This is a taxpayer's suit to enjoin the defendants from erecting a dormitory on the campus of the University of Minnesota. The Board proposes to finance the building of the dormitory by using the net earnings of the dormitory, the campus rentals, and the earnings of the press, and to anticipate earnings to the extent of \$215,000.00, by undertaking to apply them as received for money now to be advanced. It is specified in detail and with some repetition that neither the dormitory nor the land upon which it is built, nor the property of the University, or the State, saving the income mentioned shall be security; and no personal or debt liability rests upon the State Board, the University or an officer. There can be no assertion of a right by the holders of the bonds against University property except the specified income. There is no individual liability, or State, or Board, or University money obligation sought to be created. Thereby the proposed transaction does not create or contract an obligation or debt of the State, or pledge its credit within the inhibitions of article 9, paragraph 5 to 9 of the Constitution."

It is, therefore, my opinion that this Act under consideration does not violate the Constitution of Florida.

November 9, 1936.

**THE BOARD OF CONTROL—GROUP LIFE INSURANCE ON
EMPLOYEES OF INSTITUTIONS**

Dear Sir:

This is in reply to your letter of November 5, in which you request my opinion as to the legality of a proposed plan to put in force group life insurance affecting the employees of various state institutions. The proposed plan is to incorporate in the contracts of employment provisions to the effect that the compensation is a certain stated salary plus paid-up group life insurance for one year in a stated amount, the amount to be fixed in accordance with the salary received by each employee.

BOARD OF CONTROL (Institutions Higher Learning)

Substantially this same plan was approved by my predecessor, Honorable Fred H. Davis, in an opinion dated November 1, 1930. The following is from that opinion:

"For example, in the case of the school board, the power of the school board would extend to the making of a contract and the "fixing of compensation of school teachers and other employees. The power to fix compensation would authorize the board to pay as a part of such compensation certain insurance premiums necessary to carry on a system of group insurance. But, in doing so the school board would only be executing contracts of employment, and the payment of the premium would merely be a part of the compensation of the employees, and would be paid out of the same fund as that from which the salaries of the employees are now being paid."

Under Section 778, Compiled General Laws of Florida, 1927, the Board of Control is given specific authority to fix the compensation of employees and provide for the payment thereof. It is therefore my opinion that the Board would have the legal authority to make provision for group life insurance of the employees of state institutions in their contracts of employment as outlined by you.

SECTION 11

**FLORIDA STATE AGRICULTURAL AND MARKET-
ING BOARD**

September 1, 1936.

**FLORIDA STATE AGRICULTURAL MARKETING BOARD—BUYERS
PLATFORM, PALMETTO, FLORIDA***Dear Sir:*

Your letter of the 6th ultimo addressed to Hon. _____ has been referred by him to this office. I note your reference to property the City of Palmetto is to furnish for the erection of a buyers platform in said City. You state that the City has foreclosed on several lots and has title to same by virtue of a Master's Deed but that State and County taxes are outstanding against the property for several years. I further note your proposal for bringing foreclosure proceedings in behalf of the County and State, making the City a party and your further suggestions with reference to the City deeding the property for the taxes and the grantee conveying to the person or authority taking title for the buyers platform.

If the proposition you have is a State Marketing project the lands should be conveyed to the State Agricultural Marketing Board and the said Board would, of course, require a clear title to lands conveyed. It seems to me the best thing to do would be to pay the taxes if it is possible to secure the money for same rather than to go through with the possible long drawn out mortgage foreclosure proceedings. In this connection I assume that you are aware that Chapter 17,442 of 1935 repealed various Sections of Chapter 14,572 of 1929 relating to foreclosure of tax liens. If, however, it should be determined to clear the title by foreclosure, as suggested by you, making the State of Florida and State Comptroller, as well as the County, complainants, I would suggest that the proceedings be carried through sale and Master's deed. The State has no desire, however, to suggest as to your method of clearing title to the lands mentioned but will insist upon abstract of title showing the lands to be clear in all respects.

January 8, 1936.

**STATE AGRICULTURAL MARKETING BOARD, "COST OF OPERA-
TION" INCLUDES DEPRECIATION, MAINTENANCE
AND RESERVES***Dear Sir:*

This is in reply to your communication of January third, requesting my opinion as to whether depreciation or reserves for ordinary wear and

FLORIDA STATE AGRICULTURAL AND MARKETING BOARD

tear are a part of the cost of operation of markets under the State Marketing Board.

Chapter 15860, Laws of Florida, Acts of 1933, provides that the State Agricultural Marketing Board may "operate the plant and market the materials handled, make such charges for services as will cover the cost of operation." The Act further provides that the funds necessary to defray the expenses of erecting and equipping the plant or plants shall be expended from the General Inspection Fund, with the provision that only such funds shall be used for the erection of such plants as are available after all other needs of the Department of Agriculture have been provided for as per appropriation during each fiscal year. The effect of these provisions is to distinguish between what might be designated capital expenditures and cost of operation.

The following is a statement from *Words and Phrases*, Third Series, Volume 5, page 635, construing the words "operating expenses" in a situation analogous, at least in principle, to the one with which we are confronted:

"Chief elements to be considered in arriving at just compensation to telephone company are 'operating expense,' including administration, labor, interest, taxes, certain items of repair, maintenance, and like, 'depreciation,' physical and functional, including wear and tear of property by use, constant destruction of property by earth's processes, supercession and obsolescence of machines and structures by progress, and fair return upon present fair value of property used and useful in public service. *Michigan Public Utilities Commission v. Michigan State Telephone Co.*, 200 N. W. 749, 781, 323 Mich. 858."

It is my opinion that the words "cost of operation" in said statute are sufficiently comprehensive to include depreciation and maintenance costs and reserves.

March 15, 1935.

**COLLECTION OF LICENSE FEE BY CITY OF SANFORD, FLORIDA,
FROM STALL HOLDERS WHO SELL PRODUCE IN RENTED
STALLS AT STATE FARMERS MARKET**

Dear Sir:

This is in response to your request for my official opinion as to the legality of the city officials of Sanford collecting license fees from stall holders who sell produce in rented stalls at the State Farmers Market in the City of Sanford. You state that the set-up is as follows:

The State Marketing Bureau in cooperation with other agencies has erected a public market place; that a farmer rents a stall in which he

FLORIDA STATE AGRICULTURAL AND MARKETING BOARD

places his products, in and from which the farmer himself sells the products of his own raising or production. Section 1270 of the Compiled General Laws of 1927, provides as follows:

"All farm and grove products and products manufactured therefrom, except intoxicating liquors, wines or beer, shall be exempt from all forms of license tax, state, county and municipal, when the same is being offered for sale, or sold by the farmer or grower producing the said products."

From the facts as stated by you, it is my opinion that the farmers selling their celery, oranges, lettuce, vegetables and other home grown products, are free and exempt from all forms of license taxes, state, county and municipal, where these products are produced by the farmer and sold by himself. If a farmer, however, should purchase vegetables and products grown by other farmers and place them in his stall and sell and dispose of them, then I think this exemption would not cover him. The Section of the law above quoted seems to be clear, and so long as it is followed I think no license tax is due the city, the State or the county.

SECTION 12

STATE BOARD OF BEAUTY CULTURE

August 11, 1936.

STATE BOARD OF BEAUTY CULTURE AND VOCATIONAL SCHOOLS

Dear Sir:

I am in receipt of your letter of June 27, 1936, with reference to the State Board of Beauty Culture Examiners and Vocational Schools. Your inquires appear to be as to whether the Beauty Culture Act applies to Vocational Schools and as to whether the State Board of Beauty Culture is authorized to examine students from a Vocational School and issue them certificates of registration and permit them to practice in the State of Florida.

In order to answer your inquires it appears proper to consider the Beauty Culture Act in connection with the State and Federal Vocational School statutes.

The original Federal Vocational Education Act was passed and approved February 23, 1917, and is now comprised in Sections 11 to 29 of Title 20, U. S. Code, Annotated, and Sections 15(c) to 15(g) of the 1935 Cumulative Annual Pocket Part to said Title and Code, in which is also included an amendment to Section 17 of said Title.

The Federal Act makes an appropriation for the purpose of co-operating with the States in paying the salaries of teachers, supervisors and directors of agricultural subjects and teachers of trade, home economics and industrial subjects and in the preparation of teachers of such subjects. The said statute also provides that to secure the benefits of such appropriations any State may through its legislative authority accept the provisions of the Act and designate or create a State Board with power to co-operate with the Federal Board for vocational education. The said Act also provides that the State Board shall prepare plans showing the kinds of vocational education proposed, the kinds of schools and equipment, courses of study, methods of instruction, qualifications of teachers and plans for the training of teachers, and that such plans shall be submitted to the Federal Board for approval if found in conformity with the provisions and purposes of the Act. Annual reports are also required of the State Board. Said Act also provides that the controlling purpose of such education shall be to fit for useful employment.

The original State Vocational Education Act was passed as Chapter 7376, Acts of 1917, and as amended is now comprised as Sections 840 to 847, Compiled General Laws of Florida, 1927. Said Act accepts the provisions of the Federal Act and creates the State Board of Education as the State Vocational Educational Board which is authorized to co-operate with the Federal Board. Said Board is authorized to formulate

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plans for the promotion of vocational education in agricultural, trade and industrial, and home economics subjects as an essential and integral part of the public school system of the State and to provide for the preparation of teachers in such subjects. It is authorized to promote the establishment by local communities of schools; to prescribe qualifications of teachers and to have full authority to provide for the certification of such teachers or to establish such schools under its own direction and control, and it is given full authority to establish and determine by general regulations the qualifications of teachers. The said Act also provides that the Board of Public Instruction of any County may establish and maintain such vocational schools and may use any monies raised by public taxation therefor.

The Beauty Culture Act is comprised in Chapter 16,800, Acts of 1935. Said Act creates a State Board of Beauty Culture Examiners consisting of three members appointed by the Governor and to be confirmed by the Senate. The said Act makes it unlawful to practice beauty culture without a certificate of registration issued by said Board or to teach in a school of beauty culture without a certificate of registered beauty culture teacher issued by the Board. It is also provided that it shall be unlawful to operate a school of beauty culture unless under the direct supervision and management of a registered beauty culture teacher. Among the qualifications to receive a certificate of registration to practice beauty culture are graduation from a school of beauty culture, approved by the Board, and the passing of a satisfactory examination conducted by the Board. It is also provided that no school of beauty culture shall be approved unless its instructors and beauty culture teachers are registered beauty culture teachers under said Act. It is also provided that no school of beauty culture shall enroll or admit any student unless such student filed, in duplicate, a verified application of such form as the State Board of Beauty Culture Examiners may prescribe. It is also provided that certificates of registration shall be renewed annually and that the required fee should be paid. The fee to be paid by applicant for examination to receive a certificate to teach beauty culture is \$100.00 and for the issuance of the certificate a fee of \$50.00 is prescribed. The fee required of an applicant for examination to determine his or her preliminary education is \$5.00. The fee to be paid for the renewal of a certificate to teach beauty culture is \$100.00.

I find only a few Court decisions that are in any way helpful in answering your inquiries. Since a construction of all of the above mentioned statutes is necessary I quote the second headnote of the decision of our Supreme Court in the case of *City of St. Petersburg, et al. vs. Pinellas County Power Company*, 57 Fla. 313, 100 So. 509, as follows:

"The legal presumption is that the Legislature did not intend to keep really contradictory enactments in the statute book, or to effect so important a measure as the repeal of a law without expressing an intent to do so. An interpretation leading to

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such a result should not be adopted, unless it be inevitable. The rule of construction in such cases is that, if the courts can by any fair, strict, or liberal construction find for the two provisions a reasonable field of operation, without destroying their evident intent and meaning, preserving the force of both, and construing them together in harmony with the whole course of legislation, it is their duty to do so."

Your attention is also called to the case of *Worth vs. Board of Public Instruction* (1933), 177 Ga. 168, 170 S.E. 77, in which it was held that a taxpayer operating a business college was not entitled to enjoin the Savannah Board of Education from conducting courses in book-keeping, stenography and typewriting notwithstanding the allegedly constituted illegal expenditure of public funds and funds received under the Federal Vocational Education Act.

Your attention is further called to the decision of our Supreme Court in the case of *Robinson vs. Keefe, et al.*, 11 Fla. 701, 149 So. 638, in which it was held that Chapter 16,088, Acts of 1933, the Anti-nepotism statute, did not repeal or modify school laws relating to examination, certification and employment of qualified public school teachers on the basis of merit. It was recited in the body of the opinion that the laws of Florida relating to the nomination and employment of school teachers are complete in themselves.

It appears that the State Vocational Education Act is complete within itself as to the qualification, examination and certification of teachers of vocational subjects. It also appears from the Federal Vocational Act that the controlling purpose of such education shall be to fit for useful employment. Both the State and Federal Vocational Acts have been in effect since 1917, and it is my information that a school for the teaching of beauty culture under the provisions of said Vocational Acts has been in operation by and under the Board of Public Instruction of Duval County for the past three years and that a similar school has been recently inaugurated under the Board of Public Instruction of Pinellas County in the City of St. Petersburg. It appears that the main purpose of the vocational schools is to fit for useful employment and it appears that the main purpose of the Beauty Culture Act is to control the practice of beauty culture.

In view of the above, it is my opinion that the Legislature of 1935 in the passage of the Beauty Culture Act, Chapter 16,800, did not contemplate that the same should annul or supersede the Vocational Education statutes. It is, therefore, my opinion that the provisions of the Beauty Culture Act, with reference to examination and certification of teachers of beauty culture in vocational schools and with reference to certification of students in such schools and with reference to approval of such schools, do not apply. It is my opinion further that graduates in beauty culture from such vocational schools must take the same examination as other applicants to practice beauty culture and

STATE BOARD OF BEAUTY CULTURE

must be certificated by the State Board of Beauty Culture Examiners before they can practice beauty culture. Such graduates would be entitled to such examination and certification regardless of any prohibitory provisions of the Beauty Culture Act with reference to qualifications of students to enter beauty culture schools and with reference to the approval of such schools by the said Board. This construction preserves the fundamental purpose of the Vocational Act to fit for useful employment and also preserves the fundamental purpose of the Beauty Culture Act to regulate and control the practice of beauty culture.

March 10, 1936.

BOARD OF BEAUTY CULTURE—RESIDENCE OR DOMICILE

Dear Sir:

Answering your letter of the 6th instant, making inquiry as to what constitutes a resident of this State I beg to say that one's legal domicile or residence is the place of his permanent home. A person may establish his permanent home and domicile anywhere he chooses, but when he goes to a particular place, that is a county or state, and there makes up his mind that that county or state is going to be his home, and that is the place to which he will return when he goes away, and it is the place where he will vote if he wishes to exercise the right of suffrage, and it is the place he intends for his citizenship to be and remain, then that place is and becomes his legal domicile and residence. It is immaterial that he may have to leave that place for periods of time in performing his duties in business or otherwise, but if that is the place which he intends to be his permanent home and domicile, and it is the place to which he returns, then it continues to be his legal domicile and residence. In other words, legal domicile and residence is a matter of both fact and intention, coupled with the actual making up of the mind that a particular place is to be a permanent home and domicile.

April 1, 1936.

**BEAUTY CULTURE BOARD—REFUNDS TO APPLICANTS
FOR CERTIFICATES**

Dear Sir:

I am in receipt of your letter of the 30th ultimo advising that the Beauty Culture Board has a considerable amount of money for which they are now unable to issue licenses in accordance with Chapter 16,800, Acts of 1935, and they desire to deposit the same in the State Treasury since they are unable to return the amounts paid by some applicants on account of applicants leaving without giving a new address and in some instances being dead, and for numerous other reasons. You make

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inquiry if said money should be deposited in the State Treasury whether they would have authority under Section 23 of said Act to make refunds by the Comptroller drawing warrants on the State Treasury when it may be determined that a refund should be made.

Section 23 of said Act reads as follows:

"All moneys received by the Board under this Act shall be paid to the Secretary of the Board, who shall give a receipt for same and shall at the end of each month report to the State Comptroller the total amount of money received on behalf of the Board from all sources, and shall at the same time deposit with the State Treasurer the entire amount of such receipts, and the State Treasurer shall place the money so received in a special fund known as the 'State Board of Beauty Culture Examiner's Fund', which fund is hereby created. Such fund shall be expended in accordance with law for all necessary and proper *expenses in carrying out the provisions of this Act* upon proper claim approved by said Board or a finance committee thereof, and is hereby annually appropriated for such purposes."

You will note that said Section provides for the fund to be expended in carrying out the provisions of said Act. I find no provision in said Act for refunds as above mentioned.

In this connection your attention is called to Article IX, Section 4 of the State Constitution, reading as follows:

"No money shall be taken from the State Treasury except in pursuance of appropriations made by law."

In view of the above constitutional provision and the fact that I find no statute authorizing such refunds, it would appear that refunds from the monies in the State Treasury by the said Board can not be made without a legislative act providing for the same.

SECTION 13

DYERS AND CLEANERS BOARD

February 12, 1936.

DYERS AND CLEANERS BOARD OFFICERS—CONTRIBUTIONS TO

Dear Sir:

I have your letter of the 8th inst., calling attention to Chapter 16, 979, Laws of Florida, Acts of 1935, relating to cleaning, dyeing and pressing and creating a State Board. You refer to the provisions of the statute for \$25.00 license fees for the year 1935 and \$3.00 license fees thereafter, and call attention to the difficulty of operating on the reduced fees. You also state that many Cleaners of the State have expressed a desire to make contributions in order to carry on the work of the department and make inquiry if you can accept such contributions and use the same for the expenses of the department.

In reply I call your attention to Section 7486, Compiled General Laws of Florida, 1927, reading as follows:

"It shall be unlawful for any officer, State, county or municipal, or any public appointee, or any deputy of any such officer or appointee, to exact or accept any reward, compensation, or other remuneration other than those provided by law, from any person whatsoever for the performance, non-performance or violation of any law, rule or regulation that may be incumbent upon the said officer or appointee to administer, respect, perform, execute or to have executed: Provided, that nothing herein shall be construed so as to preclude a sheriff or his deputies, city marshal or policeman from accepting rewards or remuneration for services performed in apprehending any criminal."

Your attention is also called to 22 Ruling Case Law 540, Public Officers 238, which contains the following language:

"It is a principle of the common law that an officer ought not to take money for doing his duty, but that he should perform his official duties without other reward or compensation than such as is fixed and allowed by law. Therefore a public officer cannot recover compensation from third persons for the performance of acts within the scope of his official duty, even though the acts were performed at their request, or though they may have expressly promised to pay him. A promise made under such circumstances is contrary to public policy and cannot be enforced.

* * * *

SECTION 14

STATE BOARD OF EDUCATION

September 26, 1935.

STATE BOARD OF EDUCATION—PARTICIPATION IN REFUNDING
OPERATIONS—PINELLAS COUNTY*Dear Sir:*

This acknowledges your of September 25, 1935, requesting my opinion concerning a proposed resolution to be passed by the State Board of Education with reference to its participation in the refunding operations of Pinellas County. The bonds involved are Pinellas County 3½% county-wide highway bonds, part of which are in the State School Fund, and another part an investment for the Agricultural College Fund.

As ruled in my opinion of October 7, 1933, (1933-34 Report, page 161), the State Board of Education has authority to accept refunding bonds in lieu of bonds held as investments of the educational funds of the State under its direction and management.

Such power to accept refunding bonds necessarily implies the power to make concessions with reference to principal, interest, maturity dates, etc., as well as the power to pay, along with other bondholders, the service charges necessary to carry out the refunding operations.

However, I would advise the Board not to accept Option 1 as contained in the proposed letter of transmittal incorporated into the said resolution.

As to Option 2, sub-paragraph (f) thereof has to do with the situation which will arise in the event the actual exchange of bonds is not consummated prior to April 2, 1936, and authorizes the trustee bank to permit endorsements approved by the named counsel to be placed upon the bonds prior to their return to the State Board of Education; such endorsements will have as their objective an alteration in the terms of the original bonds so that the same will be payable as far as is legally possible, in accordance with the terms of payment of the refunding bonds. While I believe that the State Board of Education has power to permit such alteration in the terms of the bonds involved, I feel that it would probably be better to not bind its hands until it is determined that such refunding bonds cannot be delivered and exchanged.

SECTION 15

ENGINEERING EXAMINERS

July 17, 1936.

ENGINEERS—EXAMINATION

Dear Sir:

I am in receipt of your letter of the 27th ultimo making inquiry if the State Board of Engineering Examiners is authorized to require the re-examination of a registered engineer for failure to comply with Section 3631, Compiled General Laws of Florida, 1927, which requires professional engineers, registered under the law, who desire to continue the practice of their professions to pay annually to the Secretary of the Board a fee of \$5.00 on or before a day to be fixed by the Board for which fee a renewal certificate of registration for the current year shall be issued.

In reply I beg to say I find nothing in the law relating to the examination and registration of professional engineers which authorizes the State board of Engineering Examiners to require the re-examination of registered engineers for such failure to comply with such Section, but it appears that any registered engineer desiring to resume the practice of his profession may pay the fee prescribed by said Section and be entitled to a renewal certificate of registration for the current year.

SECTION 16

COMMISSIONERS OF STATE INSTITUTIONS

March 16, 1936.

BOARD OF COMMISSIONERS OF STATE INSTITUTIONS—CON-
TRACTS WITH ARCHITECTS IN FEDERAL EMERGENCY
ADMINISTRATION PUBLIC WORKS*Dear Sir:*

You have handed me your file in connection with certain correspondence had by you with Honorable _____, Acting State Director, Federal Emergency Administration of Public Works.

This file reflects the fact that Mr. _____ hitherto requested of you certified copies of firm agreements between the Board of Commissioners of State Institutions and certain architects, in connection with construction programs of State institutions. It appears that you have transmitted to Mr. _____ certified copies of all agreements in connection with the matter, which were available; and that Mr. _____ states that such agreements do not appear to be sufficient because, first, they consist of letters which he states do not appear to have been written by duly authorized representatives; and, second, there does not appear to have been a meeting of the minds of the parties as to what work was to be performed, and as to the amount of money to be paid therefor. He further states that the offer and acceptance letters, and the terms therein contained, do not seem to reflect the project or the project cost; and that, as submitted, he cannot approve the contract in such form.

As you know, a bilateral contract is one which binds both parties thereto to performance in accordance with its terms; and a unilateral contract binds the offerer upon acceptance by act of the offeree. There appears to be no question but that the Board of Commissioners of State Institutions would be bound upon these letters, provided that the work therein outlined was performed by the offeree. It is my understanding that all, or substantially all, of the work required to be done by the architects in question, has been done, so that little remains to do except to pay a residue of commissions. In this situation, it seems rather unduly technical to raise the question that the representatives of the architect were not authorized to enter into such agreements. Indeed, there is no indication of any such lack of authority. The position taken is simply that there is no affirmative showing of such authority. If the Acting State Director requires it, of course it will be necessary to comply with his directions, and take such supplemental memoranda or affidavits as will show conclusively what already appears to be the fact, namely, that all parties to the agreements intended to bind themselves thereby, and that they were entered into by and between authorized representatives of the parties in question.

COMMISSIONERS OF STATE INSTITUTIONS

This, however, would, at this late date, appear to be rather useless, as all of the parties to the instruments in question have treated the same as if they were binding, and have performed strictly in accordance therewith.

July 16, 1936.

BOARD OF COMMISSIONERS OF STATE INSTITUTIONS—FEES OF ARCHITECTS

Dear Sir:

I am in receipt of your letter of the 10th instant advising that your office is unable to agree with the architect as to his fees on said construction projects at the Florida State Hospital and enclosing what purports to be agreements on the several projects in the form of letters, under dates of July 18, 1934, August 19, 1935, and October 9, 1935, all of which were addressed to Mr. _____, Daytona Beach Florida, the first appearing to have been signed by "Representative, Board of Commissioners of State Institutions" and the last two appearing to have been signed by "Secretary to the Board." You further state that it is suggested by the architect that the matter be submitted to this office and that he would be willing to abide by our decision. You further state your views relative to the matter, together with the views of the architect.

You list the 4 projects, showing estimated cost and also contract award in each instance as follows:

	Estimated Cost	Contract Award
GENERAL HOSPITAL		
(Project No. 2)	\$109,494	\$100,000
White Women's Ward		
(Project No. 1)	192,528	153,500
Col. Women's Ward		
(Project No. 3)	85,797	87,000
Tubercular Hospital		
(Project No. 4)	128,085	169,500

You further list what you consider to be the correct fee due the architect on each project, as follows:

General Hospital	3% of \$109,498.00	\$3,284.82
White Women's Ward	3% of 153,500.00	4,605.00
Col. Women's Ward	3% of 87,000.00	2,610.00
Tubercular Hospital	3% of 133,208.40	3,996.25
Total.....		\$14,496.07

The above mentioned letter of July 18, 1934, appears to relate to the General Hospital, listed as Project No. 2. The third paragraph of said

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letter provides that the compensation of said work shall be at the rate of 3% based on the estimate of the job. Since the estimated cost of this project is \$109,494.00 it would appear that the amount due the architect on said project would be 3% of said amount, or \$3,284.82, as listed by you.

The above mentioned letter of August 19, 1935, appears to relate to the Tubercular Hospital, or Project No. 4. Paragraph 3 of said letter provides that compensation for this work shall be at the rate of 3% based on the actual cost of constructing the building by contract. This paragraph fixes the cost of construction as the basis of payment and this basis is not changed or affected by the subsequent paragraph relating to the duties of the architect, since it appears the Board did not require performance by the architect under such subsequent paragraph. It, therefore, appears that the amount due the architect on said project would be 3% of said contract award, or actual cost of construction, in the sum of \$169,500.00, which would amount to \$5,085.00, instead of the sum of \$3,996.25, listed by you.

The above mentioned letter under date of October 9, 1935, appears to relate to White and Colored Women's Wards, or Projects No. 1 and No. 3. Paragraph 3 of said letter provides that compensation for this work shall be 3% of the actual cost of construction. The contract price or cost of construction of Project No. 1 is \$153,500.00 and the amount due the architect is 3% of said amount, or the sum of \$4,605.00, as listed by you. The contract price or cost of construction of Project No. 3 is \$87,000.00 and the amount due the architect on this project would be 3% of said amount, or the sum of \$2,610.00 as listed by you.

SECTION 17

STATE ROAD DEPARTMENT

August 31, 1935.

STATE ROAD DEPARTMENT—REQUISITIONS

Dear Sir:

I am in receipt of your letter of this date requesting my opinion as to whether, under the provisions of Senate Bill No. 370, Chapter 17247, Laws of 1935, you should pay requisitions made by the State Road Department.

It is my opinion that the only fund affected by the appropriation to the County School Fund made by Senate Bill No. 370 is the General Revenue Fund, and that you should pay requisitions of the State Road Department in full, provided that none of such payments are made from the General Revenue Fund.

July 9, 1935.

STATE ROAD DEPARTMENT—PWA GRANT FOR CONSTRUCTION
OF BUILDING—HOUSE BILL NO. 1036, CHAPTER
17280, ACTS 1935

Dear Sir:

This acknowledges receipt of yours of July 9th, wherein you advise that the State Road Department is in process of procuring a grant from the Public Works Administration to construct an annex or addition to the Martin Office Building in Tallahassee. You advise that if the grant is made and the addition built, such addition will be occupied by the Road Department. You further advise that the State, or department thereof affected, must show itself to be in a position to legally furnish or appropriate 45% of the funds necessary for the building, in which event the Public Works Administration then furnishes the remaining 55% as an outright grant.

You ask for my opinion as to whether or not, under existing statutes, there is authority in the State Road Department to expend moneys appropriated to the Department for such purposes.

You will note that the three-cent first gasoline tax as provided by Chapter 15,659, Laws of Florida, Acts of 1931, is, by section 6 of said Act, to be used for the construction and maintenance of State Roads "as otherwise provided by law under the direction of the State Road Department, which Department may from time to time make requisition on the Comptroller for funds to pay for the construction and maintenance of State roads."

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STATE ROAD DEPARTMENT

Furthermore, by Section 5 of Chapter 7900, Laws of Florida, Acts of 1919, it is made unlawful for the Department, or any part thereof, or employee thereof, etc., to be interested in any contract for the construction of any bridge, building, or house, or the performance of any other work in which the State Road Department may be concerned, etc.

By House Bill No. 1038, Chapter 17281, Acts of 1935, amending Chapter 15859, Laws of Florida, Acts of 1933, it is provided that the headquarters and general office of the State Road Department shall be located at the State Capitol, and until suitable and adequate space for such offices shall be provided in the State Capitol Building, or other building owned by the State, the Department shall have power and authority to rent or lease suitable office room etc.

By House Bill No. 1036, Acts of 1933, it is specifically provided in Section 1 that the State Road Department of Florida is authorized and empowered "to purchase, lease, or *otherwise acquire*, any land and to take deed thereto in the name of the State of Florida when such lands shall be necessary in connection with the layout, construction, repair or maintenance, of any STATE HIGHWAY or appurtenance thereof, and *any land or buildings, or both*, necessary to the efficient accomplishment of the foregoing purposes."

Viewing these statutes as a whole, they definitely contemplate proper and adequate office and administrative facilities for the proper operation of the State Road Department, so that it may efficiently accomplish the purpose of its creation, to-wit: the laying out, construction, repair or maintenance of State Highways.

It is, therefore, my opinion that the State Road Department has authority, under the foregoing statutes, to expend the moneys contemplated by the proposed transaction with the Public Works Administration as outlined herein, such expenditure to be made from the funds appropriated for the use of the State Road Department, and it is further my opinion that such appropriation has been made and the expenditure therefrom for such purposes will be legal and valid.

SECTION 18

FLORIDA INDUSTRIAL COMMISSION, WORK-
MEN'S COMPENSATION

September 11, 1936.

WORKMEN'S COMPENSATION—BOARD OF CONTROL—INJURIES
SUSTAINED BY EMPLOYEE WHILE TRAVELLING
ON OFFICIAL BUSINESS

Dear Sir:

This is in reply to your letter of September 3. I have carefully considered the statements set forth in your letter and copies of correspondence enclosed therein.

Under the facts submitted to me it is my opinion that the case of Miss _____ comes within the provisions of the Workmen's Compensation Act. The following is Section 2, Subsection 5 of said Act:

"The term 'injury' means personal injury or death by accident *arising out of and in the course of employment*, and such diseases or infection as naturally or unavoidably results from such injury." (Italics ours)

The following is a provision contained in Section 9 (a) of said Act:

"Compensation shall be payable under this Act in respect of disability or death of an employee if the disability or death results from an injury *arising out of and in the course of employment*." (Italics ours.)

It is my opinion that the injury sustained by Miss _____ was one arising out of and in the course of employment. See "Workmen's Compensation Law" by Schneider, Vol. 1, pages 1157-8. See also pages 809-18.

You inquire further whether the Board of Control could legally insert a clause in its travelling requisitions which would put the traveller on his own responsibility in case of accident. In view of the provisions of Section 21 (b) of the Workmen's Compensation Act, it is my opinion that such agreement would be void. Section 21 (b) reads as follows:

"No agreement by an employee to waive his right to compensation under this Act shall be valid, unless he has rejected the Act as provided in Section 5."

August 27, 1936.

WORKMEN'S COMPENSATION—TOTAL COMPENSATION FOR
INJURY RESULTING IN PERMANENT DISABILITY
AND DISFIGUREMENT CANNOT EXCEED
FIVE THOUSAND DOLLARS*Dear Sir:*

You state in your request for my opinion as follows:

"A compensation case which liability has been accepted by the employer may result in a total permanent disability for which compensation covering the maximum amount of \$5,000.00 will be payable. The disability is caused from a fracture of the skull which has resulted in serious facial disfigurement."

Section 15 (c) (20) of the Workmen's Compensation Act reads as follows:

"Disfigurement: The Commission shall award proper and equitable compensation for serious facial or head disfigurement, not to exceed \$2,000.00, provided that in such award the Commission shall consider only the effect such disfigurement shall have on the future earning capacity of the injured employee."

Section 20 (m) of the Workmen's Compensation Act reads as follows:

"The total compensation payable under this Act for injury or death shall in no event exceed the sum of \$5,000."

While, under the doctrine announced by the Supreme Court of Oklahoma in the case of Ford Motor Company vs. Farmer, 293 Pac. 191, recovery may be had, in the case of an injury resulting in disability and serious facial or head disfigurement, for both the disability and the disfigurement, it is my opinion that Section 20 (m) limits the total recovery to \$5,000.00.

October 18, 1935.

WORKMEN'S COMPENSATION—COUNTY NOT ACCEPTING OF
REJECTING ACT*Dear Sir:*

I beg to acknowledge receipt of your favor of the 15th inst., enclosing letter from Mr. ———, with newspaper clipping relative to advice given the Board of County Commissioners in and for Hillsborough County by the county attorney, in which he advised the Commission that it need not accept nor reject provisions of the Florida Workmen's Com-

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pensation Act, but should take the position that the County was not affected thereby.

In reply I beg to state that the County is not liable in any action at law for injuries to persons growing out of torts and therefore employees of the County cannot recover for any injuries resulting to them while in the performance of their duties, unless the County should voluntarily elect to insure against such injuries under the provisions of the Workmen's Compensation Act. The advice of the county attorney is correct to the effect that a county cannot be sued in an action *ex delicto*. See *Keggin vs. Hillsborough County*, 71 Fla. 356, 71 So. 372.

October 11, 1935.

**WORKMEN'S COMPENSATION ACT—COMMON CARRIERS
EXEMPTED**

Dear Sir:

I acknowledge receipt of your letter of the 8th inst., to which is attached letter of _____, requesting the opinion of this office as to whether or not a railroad or express company may comply with the provisions of the Workmen's Compensation Act and be governed thereby.

Section 9(b) of the Act provides "no compensation shall be payable in respect of the disability or death of an employee of a common carrier by a railroad or express company or pullman or sleeping car company engaged in intrastate, interstate or foreign commerce." I am of the opinion that this clause under Section 9 of the Act, under the heading "COVERAGE," forbids a common carrier from operating under the Act and clearly shows the intent of the Legislature to be that the Act should not apply to common carriers, even though common carriers are not included in the excepted employing agencies named in Section 2, Paragraph (1) of the Act.

In other words, the recitation that no compensation shall be payable in respect to disability or death of an employee of a common carrier, as contained in Section 9 of the Act, quoted above, is more than an exemption of a common carrier from the provisions of the Act, in that the section forbids the application of the provisions of the Act to common carriers.

FLORIDA INDUSTRIAL COMMISSION, WORKMEN'S COMPENSATION

October 11, 1935.

**WORKMEN'S COMPENSATION ACT—REFUSAL OF OCCUPATIONAL
LICENSES BY TAX COLLECTOR NOT AUTHORIZED***Dear Sir:*

I acknowledge receipt of your favor of the 5th inst., enclosing letter from Hon. _____, Tax Collector, Polk County, Florida, in which request is made for my opinion as to whether or not, under Section 45 (a), a tax collector may refuse to issue occupational licenses to persons employing three or more, when such employers have not complied with the provisions of the Workmen's Compensation Act.

In reply I beg to state that in my opinion it would be the duty of the tax collector to issue occupational licenses to all applicants, irrespective of whether or not such applicants have complied with the provisions of the Workmen's Compensation Act. Section 45 (a) makes it the duty of the county officers to assist in the administration and carrying out of the provisions of the Act. This provision in the Workmen's Compensation Act is not intended to conflict with any other duties imposed by law upon a county officer. It would be the duty, however, of the tax collector to secure and furnish information and to otherwise assist in requiring employers to observe the provisions of the Act.

October 5, 1935.

**WORKMEN'S COMPENSATION ACT—LIABILITY FOR EMPLOYEES
OF SUB-CONTRACTOR***Dear Sir:*

I have your letter of the 2nd inst., enclosing letter of _____ of Tampa, Florida, under date of September 24, and note that you desire the opinion of this office as to whether or not members of a partnership who are subcontractors are employees of the general contractor, under the terms of the Workmen's Compensation Act.

You will note from Section 2, Paragraph (2) of the Act that the term employee is defined as one under contract of hire. Such members of the partnership as are employed in performing the labor under the sub-contract would, in my opinion, be employees of the general contractor and would come under the provisions of the Act. Section 10 of the Act also makes the employer (general contractor) liable for payment of such compensation to the employees of the subcontractor, unless the subcontractor has secured such payment.

October 5, 1935.

WORKMEN'S COMPENSATION ACT—LIABILITY—COMMON LAW
DEFENSES

Dear Sir:

I have your letter of the 3rd inst., enclosing a letter from Hon. ———, Attorney at Law, Florala, Alabama, under date of September 26. I note from Mr. ——— letter to you that he desires your answer to three questions, viz.:

- "1. If my client waives its exemption and elects to operate under the Act, would the schedule of compensation set out in the Act be its sole and *exclusive* liability?"
- "2. If the above question is answered in the affirmative, kindly point out to me that section or portion of the Act which unequivocally fixes such exclusiveness of liability."
- "3. Please point out any section or provision of the Act whereby the common law rights of action of the employees are surrendered, in case both the employer and employee operated under the Act."

It appears from Mr. ——— letter that his client, ———, is engaged in logging, poles and piling operations, which are exempt from the provisions of the Act, under Paragraph (21) of Section 2 of the Act, yet his client contemplates waiving its exemption and coming under the terms of the Act, as provided in Subsection (b) of Section 4.

In answer to Mr. ——— first question, I desire to state that it is my construction of the Act that the Legislature intended that the schedule of compensation set out in the Act would be the sole and exclusive liability of employers operating thereunder. Section 10 of the Act, while ambiguous in its wording and literal meaning, was evidently intended by the Legislature to mean that every employer who operates under the provisions of the Act shall be liable for and shall secure the payment to his employees of the compensation payable under Sections 13, 15 and 16, and the following Section 11 clearly limits the liability of such employers (if Section be construed as contended above) as *exclusive* and in place of all other liability of such employer to the employees.

This, I believe, answers all three of Mr. ——— questions, as there are no other provisions of the Act bearing thereon.

There are many ambiguities in the Act, as the meaning of Section 10 is not entirely clear without taking the whole Act into consideration to arrive at the intention of the Legislature.

Mr. ——— states that from Section 6 he gathers that it is implied that the defendant employer who operates under the provisions of the

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Act may invoke the three common law defenses therein named. Section 6, as I construe it, is limited in its operations to employers who elect not to operate under the Act and not to those operating under the Act. There might be some question as to whether the Court would hold this Section valid, under the wording of the title of the Act, which prohibits a resorting to certain common law causes of action and defenses in cases falling *within* the provisions of the Act.

It is not the function of this office, however, to advise as to the constitutionality of any act, nor does it lie in the power of an administrative officer to question the constitutionality of the act in administering it.

October 5, 1935.

WORKMEN'S COMPENSATION—CANNING OF AGRICUTURAL AND HORTICULTURAL PRODUCTS AND TRANSPORTATION OF SAME

Dear Sir:

I have your letter of the 3rd inst., in which you request my opinion as to whether reference to the exemption of canning of agricultural and horticultural products as set forth in Section 2(1) of the Workmen's Compensation Act, "the term agricultural and horticultural farm labor shall include canning of agricultural and horticultural farm products," extends to and covers the transportation of such canned goods by truck drivers employed in hauling the canned goods from the canning plant to docks for shipment.

In reply I beg to state that it would depend entirely as to whether or not the service performed by the truck driver was a part of the operation of the company engaged in the canning of the agricultural and horticultural products, e. g., if the canning company's warehouse or storage place for its canned products were located at its point of shipment and it was a part of the canning operation that the canned goods should be transferred from the place where canned to the warehouse for storage, then the necessary handling of the canned goods in the operation of the canning plant would come under the exemption set forth in Section 2 (1) of the Act, while on the other hand, if the operation of canning agricultural and horticultural products is completed at the plant of the canning company, the transportation of such goods to the warehouse or shipping point of another for shipment would not come within the exemption.

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September 23, 1935.

WORKMEN'S COMPENSATION—BOARDS OF PUBLIC
INSTRUCTION—SCHOOLS

Dear Sir:

I have your favor of the 16th inst., in which you ask if the School Board of Polk County has the right to expend money in partial payment for group insurance covering employees of the Board.

In reply, I beg to state that the Workmen's Compensation Act requires the School Board to carry insurance to cover injuries to employees received while in the performance of their employment and further provides that school boards are deemed self-insurers unless they elect to procure and maintain insurance to secure the benefits of the Act to their employees. There is no provision giving authority to the School Boards to expend money in partial payment of additional group insurance of employees, while operating as self-insurers.

September 11, 1935.

WORKMEN'S COMPENSATION—SCHOOLS—BOARD OF CONTROL

Dear Sir:

I acknowledge receipt of your letter of the 10th inst., requesting opinion of this office as to whether or not the Florida Workmen's Compensation Act makes it mandatory upon the Board of Control to take out insurance for all employees at the institutions under its management.

Paragraph (3) of Section 2 of the Act defines employer as the State, all political subdivisions thereof, all public and quasi-public corporations therein, and every person carrying on any employment and the legal representatives of a deceased person or the receiver or trustee of any person.

Section 3 of the Act provides that every employer, unless otherwise specifically provided by the Act, shall be presumed to have accepted the provisions of the Act and be bound thereby unless such employer shall give, prior to the injury, notice to the contrary, as provided in Section 5.

By Section 5, employers may elect not to accept the provisions of the Act, and if such employer elects not to accept the provisions of the Act, the employer shall post and keep posted in a conspicuous place or places in and about the place or places of business typewritten or printed notices to such effect, in accordance with a form to be prescribed by the Commission, and by filing duplicates of such notices with the Commission.

If the Board of Control should determine to reject the provisions of the Act, it may do so by taking the necessary steps as outlined under the provisions of Section 5 of the Act.

FLORIDA INDUSTRIAL COMMISSION, WORKMEN'S COMPENSATION

September 11, 1935.

WORKMEN COMPENSATION SCHOOLS—TAX EXEMPT COLLEGE
NOT EXEMPT FROM ACT*Dear Sir:*

I beg to acknowledge receipt of your letter of the 10th inst., enclosing letter from _____, of the John B. Stetson University, DeLand, Florida, requesting the opinion of this office as to whether or not tax exempt colleges or institutions are subject to the provisions of the Florida Workmen's Compensation Act.

The Act, by its terms, excepts from its provisions tractor sawmills and other sawmills employing not more than ten laborers in the operation of the sawmill; occupations covered by a federal compensation, such as Federal Longshoremen's Act; domestic service; agricultural and horticultural farm labor; but does not except tax exempt colleges or institutions and therefore such institutions would come under the provisions and terms of the Act.

Tax exempt colleges and educational institutions may, however, elect not to operate under the provisions of this Act by giving notice as provided in Section 5 of the Act; that is, by posting and keeping posted in a conspicuous place or places in and about the place of business typewritten or printed notices to such effect, in accordance with a form to be prescribed by the Commission and by filing duplicate of such notice with the Commission.

September 10, 1935.

WORKMEN'S COMPENSATION MUNICIPALITIES REJECTING

Dear Sir:

I acknowledge receipt of your favor of the 6th inst., in which you ask my opinion as to whether or not, under Section 5, Florida Workmen's Compensation Act, passed by the 1935 Florida Legislature, a city may reject the terms of the law in its entirety as provided under such sections, inasmuch as Section 36 of the Act makes municipalities, as subdivisions of the State, self-insurers.

It is my opinion that a municipality, like any other employer, may elect to reject the terms of the Act in its entirety, but if it does not so elect, it would then become a self-insurer, unless it provided for insurance through some other channel, as set out in Section 38 of the Act. In other words, Section 38 applies only to such municipalities as do not elect to reject the provisions of the Act.

FLORIDA INDUSTRIAL COMMISSION, WORKMEN'S COMPENSATION

August 31, 1935.

WORKMEN'S COMPENSATION—CASUAL EMPLOYMENT

Dear Sir:

I have your letter of the 30th inst., in which you state:

"The Landscape Company of West Palm Beach, while performing a contract for the State Road Department at Stuart, Florida, employing approximately twenty men in transplanting trees in general landscape work on bridge approaches had an accident happen to an employee. Mr. _____ states that he normally employs less than three men,"

and request an opinion of this office as to whether or not the Workmen's Compensation Bill applies to the statement of facts as above given.

You will note under Section 2 of the Act, paragraph (2), subsection (a), that it provides:

"(a) The term 'casual' as used in this Section shall be taken to refer only to employments where the work contemplated is to be completed in not exceeding 10 working days, without regard to the number of men employed, and where the total labor cost of such work is less than \$100."

Any other employment than that outlined by subsection (a) above quoted would evidently mean regular employment and would come under the provisions of the Workmen's Compensation Act, unless excepted by the provisions of the Bill, as domestic service, agricultural and horticultural farm labor, etc. The example given in your letter depends entirely upon the question of fact which would have to be determined in each case, that is, as to whether or not there were more than two persons regularly employed in the same business or establishment as provided in Paragraph (1) of Section 2 of the Act.

August 24, 1935.

WORKMEN'S COMPENSATION SCHOOL INDEPENDENT BUS DRIVERS

Dear Sir:

Replying to your letter of the 22nd inst., inquiring as to whether or not the Workmen's Compensation Act, passed by the Legislature of 1935, is applicable to independent school bus owners who work for the County School Board under contract, I beg to state that Section 2, Paragraph (2), Workmen's Compensation Act, defines the term employee as every person engaged in an employment under any contract of hire, etc.

FLORIDA INDUSTRIAL COMMISSION, WORKMEN'S COMPENSATION

Under this definition one employed or under contract to perform services to the County Board of Public Instruction would be an employee of the Board, whether he owned the vehicle used in his employment or not, and would come under the Workmen's Compensation Act to the same extent as would one employed under contract to teach.

As the courts give weight to the construction placed upon an act by the officers charged with its administration, I would suggest that you take the matter up with Hon. _____, Chairman of the Florida Industrial Commission, and be guided by his interpretation.

July 22, 1936.

**WORKMEN'S COMPENSATION INSURANCE—ACCIDENT
PREVENTION**

Dear Sir:

This is in reply to your letter of July 10th, requesting my opinion as to the legality of the acceptance by the Florida Industrial Commission of funds from insurance companies equal to 2% of the Workmen's Compensation premiums collected by them, to be used exclusively for the purposes of accident prevention and enforcement of safety regulations. You state further that the extreme losses suffered by the companies in Florida since the Compensation Act has been effective have brought this offer from the insurance companies, which believe it advisable to take these steps to reduce the number of industrial injuries. You further state that the 2% is to be used by the Florida Industrial Commission exclusively for the purposes hereinabove stated and is to be included in the insurance rate which, under the Workmen's Compensation Act, is subject to your approval as Insurance Commissioner.

While accident prevention and enforcement of safety regulations are not strictly administrative duties of the Industrial Commission, the accomplishment of such purposes through the agency of the Industrial Commission is clearly within the purview of the Workmen's Compensation Act. Section 46 (a) of the Act is as follows, to-wit:

"The Commission shall make studies and investigations with respect to safety provisions and the causes of injuries in employments covered by this Act, and shall from time to time make to the Legislature and employers and carriers such recommendations as it may deem proper as to the best means of preventing injuries."

The statutory provisions above set forth clearly indicate that the intent of the Act is entirely consistent with the performance of such additional humanitarian duties through the instrumentality of the Industrial Commission. There is, however, another provision to be found

FLORIDA INDUSTRIAL COMMISSION, WORKMEN'S COMPENSATION

in Section 44 (b) of the Act which would authorize the Governor of the State to delegate such additional duties to the Industrial Commission. It reads as follows, to-wit:

"Additional duties connected with labor may be designated by the Governor for performance by the Industrial Commission."

It is, therefore, my opinion that the Florida Industrial Commission has the authority to accept the 2% set aside for accident prevention and enforcement of safety regulations, particularly if the Governor designates such duties to be performed by the Industrial Commission, and that you have the authority to approve insurance rates, including the amount to be so expended.

October 16, 1935.

**WORKMEN'S COMPENSATION INSURANCE—CARE IN GRANTING
PERMITS TO COMPANIES**

Dear Sir:

I beg to acknowledge receipt of your letter of the 9th inst., in which you state that your attention has been called to the fact that large amounts have been lost, representing payments of workmen's compensation on account of injuries, in the various states, by reason of the insolvency of the carrier insurance companies. I note from the attached enclosure, "Reprint from the New York Journal of Commerce, July 22, 1935", in which is discussed continued solvency in insurance, the following interesting statement:

"An analysis made by one of the leading liability insurance companies of claims paid by it during 1934 shows that it paid in that year workmen's compensation claims under policies issued by it in each of the years from 1912 to 1934. It also paid Claims in 1934 under automobile liability policies issued in each of the eleven years beginning with 1924.

"This exhibit furnishes ample evidence of the need for selecting companies of established solvency in which to insure workmen's compensation and liability risks, since claims may not be settled finally for many years after the policy has expired. If the company is no longer in business and solvent when the time comes to meet the claim, the person dependent upon it for protection faces serious disappointment.

"A leading insurance reference book lists more than sixty stock casualty companies which wrote workmen's compensation, automobile insurance, or both, as having retired from business since 1912 under conditions which indicate that they did not pay their claim in full. Some were turned over to receivers and

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others to State Insurance departments for liquidation. Many were merged with companies which have since failed, or they reinsured their risks in companies which failed subsequently before retiring from business.

"The need for very careful selection of an insurance company which carries a risk on which liability is a long time in maturing can scarcely be stressed too strongly. In fire, burglary, plate glass and some other classes of insurance, the company contracts to indemnify for losses which occur within one year or, at most, within five years. Also, the character of the risk is such that the loss can be quickly determined and settled. If the insurance company remains solvent during the term of the policy and for a short time after its expiration, the assured stands little chance of failing to collect the indemnity to which he is entitled.

"When an employer buys workmen's compensation insurance, on the other hand, he contracts with the insurance company to pay compensation claims resulting from disabilities incurred by employees during the term of the policy, but payable, under State laws, in installments over a long period. If the insurance company defaults during that period, the liability for payment of the remaining installments falls back upon the employer under the laws of most of the States."

Under Section 28, Paragraph (1), Subsection (d) of the Florida Workmen's Compensation Act, no company or association is authorized to write compensation insurance under the provisions of the Act without a permit from the Insurance Commissioners. Such permit shall be given upon application to the Insurance Commissioner by said Commissioner *when satisfied of the solvency of such corporation or association and its ability to perform all its undertakings.*

From the above stated provisions, it is apparent that it is the duty of the Insurance Commissioner, before issuing any permit, *to be satisfied of the solvency of the insurance company or association and of its ability to perform all of its undertaking.* In the case of compensation paid by reason of death of an employee, it is provided by Section 16 of the Act that the payments under the insurance policy shall extend over a period of nearly seven years and an insurance company might be entirely solvent and yet its assets and available funds for the payment of losses and compensation might not be sufficient to satisfy the Insurance Commissioner that such company would continue to operate and be able to discharge and carry out its obligations under the policy written for the period of time covered under the provisions of the Workmen's Compensation Act, requiring the payment of compensation over long periods of time.

From the enclosures attached to your letter, it appears that serious losses have resulted to the dependents of persons who were killed in the

FLORIDA INDUSTRIAL COMMISSION, WORKMEN'S COMPENSATION

course of their employment, through the failure of insurance companies writing the workmen's compensation insurance. This being true, there is a solemn duty resting upon the Insurance Commissioner, not only to be satisfied of the solvency of an insurance company applying for a permit to write insurance under the provisions of the Act, but also of such company's ability to perform all of its undertakings, which includes the payment of compensation over a long period of years, under the increased risks assumed in policies of insurance covering hazardous occupations.

The Florida Workmen's Compensation Act, Section 38, Paragraph (a), Subsection (2), provides that the Florida Industrial Commission may require self-insurers to make deposits of securities, or a surety bond conditioned for the payment of such compensation, in kind and in amount determined by the Commission and subject to such conditions as the Commission may prescribe. The Act does not require the deposit of such securities or bond on the part of an insurance company, and there is no express authority for the Commission to require it. The Insurance Commissioner, however, could decline to approve or issue a permit until satisfied that the insurance company applying therefor is able to perform all of its undertakings; and, if the insurance company desired to deposit securities or to give a bond for the performance of the provisions written in its policy, so to satisfy the Insurance Commissioner, he would be warranted in accepting such deposit or such bond as a means of satisfying himself of the company's ability to perform its undertakings.

In other words, the Insurance Commissioner is not required to issue a permit until he is satisfied both as to the solvency of the applicant and its ability to perform all of its undertakings. The way is left open by the Act for the applicant to do and perform any acts which may be necessary to assure and satisfy the Insurance Commissioner of its ability to perform.

February 1, 1936.

**FLA. INDUSTRIAL COMMISSION WORKMEN'S COMPENSATION—
STATE PLANT BOARD**

Dear Sir:

This is in reply to your inquiry of January 28.

It is my opinion that the State Plant Board has authority to pay to the fund for the administrative costs of the Florida Industrial Commission from funds appropriated for necessary and regular expenses the amounts assessed against it under the provisions of "Florida Workmen's Compensation Act".

FLORIDA INDUSTRIAL COMMISSION, WORKMEN'S COMPENSATION

It is also my opinion that the Board has authority to pay claims for compensation under the terms of the "Florida Workmen's Compensation Act" to injured employees from the appropriations made for the necessary and regular expenses of the work of the State Plant Board, inasmuch as the Board has chosen to act as a self-insurer as provided in the "Florida Workmen's Compensation Act".

I base my opinion upon the fact that the "Florida Workmen's Compensation Act", which is Chapter 17481, Laws of Florida, Acts of 1935, was approved by the Governor on May 25, 1935, and became effective on July 1, 1935. The said Act was legally enacted as a law prior to the Appropriation Act, Chapter 16772, Laws of Florida, Acts of 1935, which was approved by the Governor on June 10, 1935, and became effective on July 1, 1935. Both of these statutes were passed at the same session of the Legislature and are to be construed together. The "Florida Workmen's Compensation Act" specifically provides in Section 2 that the word "employment" includes employment by the State and all political subdivisions thereof, except officers elected at the polls. In view of these facts expenses accruing under the provisions of the "Florida Workmen's Compensation Act" would be embraced within the provisions appropriating funds for necessary and regular expenses of the State Plant Board.

July 11, 1935.

**FLORIDA INDUSTRIAL COMMISSION—WORKMEN'S COMPENSA-
TION—HOUSE BILL NO. 29, CHAPTER 17481 OF 1935—
DAIRY INDUSTRY**

Dear Sir:

I am in receipt of your letter of the 6th instant making inquiry if the dairy industry is exempt from the provisions of House Bill No. 29, known as the Florida Workmen's Compensation Act.

In reply your attention is called to paragraphs 1 and 21 of Section 2 of said Act, reading as follows:

(1) "The term 'employment' includes employment by the State and all political subdivisions thereof, except officers elected at the polls, and all public and quasi-public corporations therein and all private employments in which three or more employees are regularly employed in the same business or establishment, except domestic service, agricultural and horticultural farm labor, and except to Tractor saw-mills and other saw-mills employing not more than ten (10) laborers in the operation of the mill, and in occupations covered by Federal Compensation, such as Federal Longshoremen's Act. The term 'agricultural and horticultural farm labor' shall include canning of agricultural and horticultural products."

FLORIDA INDUSTRIAL COMMISSION, WORKMEN'S COMPENSATION

(21) "The term 'agricultural and horticultural farm labor' shall include the operations commonly known as 'working the trees' for naval stores purposes, and the removal of stumps from land which may be used for agricultural, horticultural or grazing purposes, and land-clearing, logging, poles, piling and cross-tie operations, and also services performed in producing agricultural and horticultural crops, and all labor employed in picking, gathering, harvesting, hauling, processing, packing and handling, in their natural or fresh state, all agricultural and horticultural products."

Your attention is further called to Webster's International Dictionary defining the word "agriculture" as follows:

"Art or science of cultivating the ground, including harvesting of crops and rearing and management of live stock; tillage; husbandry; farming; in a broader sense, the science and art of the production of plants and animals useful to man, including to a variable extent the preparation of these products for man's use. In this broad sense it includes farming, horticulture, and forestry, together with such subjects as butter and cheese making, sugar making, etc."

In view of the above it is my opinion that a dairyman producing on his own farm all or a part of the dairy products handled by him would be exempt from the provisions of said Act and that a dairyman who is simply a distributor and does not produce any part of the products handled by him would be subject to the provisions of said Act.

Find enclosed all attached correspondence.

July 5, 1935.

WORKMEN'S COMPENSATION, APPLICATION OF SEC. 10(a),
CHAPTER 17481 OF 1935

Dear Sir:

I acknowledge receipt of your letter of July 3, 1935, requesting opinion as to whether Section 10 (a), House Bill No. 29, Chapter 17481, Acts of 1935, Workmens' Compensation Act, applies to the group of employers and employees referred to in Section 4 of the Act.

Section 4 of the Act referred to provides that certain employers and employees may exempt themselves from the provisions of the Act by giving notice of non-acceptance as provided in Section 5 of said Act, but nowhere in the Act is found any provision requiring any class of employers or employees to elect to operate under its provisions; therefore, there are no classes of employers mentioned in the Act to which Section 10 (a) applies. It does not apply to the class of employers and employees named in Section 4 of the Act.

544 BIENNIAL REPORT OF THE ATTORNEY GENERAL
FLORIDA INDUSTRIAL COMMISSION, WORKMEN'S COMPENSATION

July 5, 1935.

WORKMEN'S COMPENSATION, EXEMPTIONS, LOGGING

Dear Sir:

Complying with your request of the 3rd inst., for opinion as to whether logging operations are exempt from provisions of House Bill No. 29, Chapter 17481, Acts of 1935, Florida Workmens' Compensation Act, I beg to state that Paragraph 21 of Section 2 of said Act classifies logging as being inclusive within "agricultural and horticultural farm labor", thereby exempting logging operations from the provisions of the Act.

June 4, 1935.

**FLORIDA INDUSTRIAL COMMISSION—HOUSE BILL NO. 29,
CHAPTER 17481 OF 1935, FLORIDA WOKMEN'S COM-
PENSATION ACT—INSURANCE CARRIERS**

Dear Sir:

Section 38 of the above Act requires that the payment of compensation under said Act shall be secured, and provides the manner thereof and for the qualifications of the carriers of insurance. Such carriers of insurance are required among other things to have a permit from the Insurance Commissioner, first satisfying him of their solvency and ability to perform all such undertakings. They are also required to secure his approval of rates for each industry classification, under which such business is written.

Before approving such rates, every insurer transacting the business of Workmen's Compensation Insurance in this State, shall file with the Insurance Commissioner the schedule of rates which it proposes to charge for each of the industry classifications under which such business is written, together with such system of schedule and/or experience rating as it may propose to use, "and no such schedule of rates or system of schedule and/or experience rating shall be put into effect until it shall have been approved by the Insurance Commissioner." To this there is provided an exception not necessary to mention here.

Sub-paragraph (d) 1 of Section 38 provides that after ninety days from the effective date of the Act, no carrier of insurance shall write any compensation insurance thereunder without a permit from the Insurance Commissioner.

It is my opinion from a careful consideration of the entire Section 38 that insurers under the Act have ninety days from July 1, 1935, the effective date of the Act, in which to satisfy the Insurance Commissioner of their solvency and ability to perform all their undertakings, and

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thereupon secure permits to write the insurance required under the Act, and also to file with the Insurance Commissioner the schedule of rates which they propose to charge for each of the industry classifications, under which such business is written, together with such system of schedule and/or experience rating as it may propose to use, and to secure the approval thereof by the Insurance Commissioner.

This answers your letter of the 3rd instant according to my construction of Section 38 of the Act.

November 6, 1936.

**FLORIDA WORKMEN'S COMPENSATION ACT—LEGALITY OF
REGULATION AFFECTING SECTION 52(b).**

Dear Sir:

This is in reply to your letter of November 6, in which you request my opinion concerning the legality of a regulation adopted by the Florida Industrial Commission with reference to Section 52 (b) of the Florida Workmen's Compensation Act.

The regulation concerning which you inquire requires insurance carriers to register annually under Section 52 (b) of the Act and pay the prescribed fee of \$100.00 annually for the year beginning July 1. It is my opinion that the Florida Industrial Commission has the authority to promulgate and enforce such a regulation. The proposed regulation comes within the scope of the authority delegated by the Legislature to the Industrial Commission and is therefore valid.

SECTION 19

FLORIDA BOARD OF FORESTRY

August 14, 1935.

FORESTRY DEPARTMENT—CONSTRUCTION OF ROADS, FIRE
LINES, TELEPHONE LINES, ETC., ACROSS TAX
DELINQUENT LANDS*Dear Sir:*

I am in receipt of a letter from your office under date of the 13th instant, signed by Assistant State Forester, referring to Section 14 of Senate Bill No. 557, Chapter 17029, of 1935, reading as follows:

"The Florida Board of Forestry is hereby vested with authority to prevent, detect, and suppress forest fires and to do all things necessary in the exercise of such authority. The Florida Board of Forestry is authorized to appoint Forest Fire Wardens, to enforce the provisions of this Act and the fire laws of the State, and the wardens so appointed and the fire-fighting crews, under their direction, may enter upon any lands for the purpose of preventing and suppressing fires and to enforce the provisions of this Act and the fire laws of the State. Such Fire Wardens and other employees of the Florida Board of Forestry may, in the performance of their duties, set back-fires, dig trenches, cut fire lines or carry on any or all customary activities in the fighting of forest fires without incurring a liability to any one."

Inquiry is made if the above quoted Section gives your Department easements for the privilege of crossing land which is tax delinquent in your fire prevention activities and in locating your skeleton organization for fire prevention areas. You ask if you are authorized to cross over such tax delinquent lands with roads, fire lines, telephone lines, etc., in the protection of other lands.

In reply I beg to say in my opinion under the provisions of the above quoted statute you would be authorized to enter upon tax delinquent lands for the purpose of preventing and suppressing an immediate fire and for such purpose to install temporary telephone lines or establish temporary fire lines or roads, but it is my opinion that said Section is not authority for you to establish permanent roads, telephone lines or fire lines on tax delinquent lands without first securing such privilege from the owners of said lands.

FLORIDA BOARD OF FORESTRY

August 16, 1935.

FORESTRY DEPARTMENT—CONSTRUCTION OF ROADS, FIRE
LINES, TELEPHONE LINES, ETC., ACROSS TAX
DELINQUENT LANDS*Dear Sir:*

I am in receipt of your letter of the 15th instant with further reference to your Department constructing roads, fire lines, telephone lines, etc., across tax delinquent lands, to which you refer as "tax delinquent (State owned) lands," and making inquiry if your Department would be guilty of trespass in crossing such lands with such roads, fire breaks and telephone lines to protect contiguous and adjoining lands over which you have secured easements. You further state that in the construction of roads timber is cut and removed in strips as much as 30 feet; that fire lines are from 8 to 20 feet wide and some clearing and removal of timber is necessary and that telephone lines are hung on regular poles and little if any of such work is temporary in its nature. You make further inquiry if your Department can have easements for the privilege of crossing tax delinquent lands whose owners are not known or can not be reached in locating your proposed control improvements.

In reply I beg to say that lands which have been sold for taxes and bid in to the State are not necessarily State owned lands and that such interest of the State is merely a lien. There would, therefore, be no authority on the part of the State to grant to your Department easements over such lands. Further answering your inquiry I beg to say that any entry upon private owned lands, even though such lands should be covered by tax certificates held by the State would not be authorized. While the State may not be sued without statutory authority therefor any unlawful entry upon lands might give the owner thereof a claim against the State and serve as a basis for a legislative Relief Act.

September 13, 1935.

FLORIDA FORESTRY BOARD

Dear Sir:

I am in receipt of a communication under date of the 10th instant, from Mr. ———, Assistant State Forester, making inquiry if the Florida Board of Forestry is authorized to acquire land in its name and whether such lands when acquired would be subject to taxes.

In reply I beg to say under the provisions of Chapter 17,027, Laws of Florida, Acts of 1935 (Senate Bill No. 561), it appears that the Florida Board of Forestry is authorized to acquire land in its own name. Since such Board is an agency of the State lands acquired by said Board would

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not be subject to State and county taxes. However, such lands might be subject to what is usually termed "special assessments" if embraced within special districts such as drainage districts should the laws pertaining to such special districts provide that lands owned by the State of Florida be subject to the special assessment. In such situation the same would apply to the lands if owned by any other State agency.

May 20, 1936.

FORESTRY DEPARTMENT—DISTRIBUTION OF RECEIPTS FROM
SALE OF PRODUCTS

Dear Sir:

I am in receipt of your letter of the 15th instant making inquiry as to the distribution of receipts from the sale of products from State Forests authorized under the provisions of Chapter 17,027, Laws of Florida, Acts of 1935. Your specific inquiry is whether or not 25% of receipts from the sale of products in addition to the 25% of receipts from the sale of lands must go to the State School Fund. You refer particularly to the following language contained in Section 3 of said Act:

" * * * The said Board is, however, authorized, permitted and empowered to receive to hold the custody of and exercise the control of any lands, and to set aside into a separate, distinct and inviolable fund, the proceeds which may be derived from the sales of the products of such lands or the use thereof in any manner; and the proceeds of the sale of such lands, save the twenty-five (25) per cent of the proceeds thereof to be paid into the State School Fund as provided by the Constitution; and the said Board is authorized, permitted and empowered to use and apply such funds for the acquisition, use, custody, management, development or improvement of any lands vested in or subject to the control of such Board. * * *

In connection with the above language it may be well to also consider the following language contained in Section 2 of said Act:

" * * * the Florida Board of Forestry is authorized to use the proceeds of the sale of any products therefrom, the proceeds of the sale of any such lands, save the twenty-five (25) per cent of such proceeds which shall be paid into the State School Fund as the Constitution requires, and such other funds as may be appropriated for use by the Florida Board of Forestry, and in the opinion of such Board, available for such uses and purposes."

Since the statute refers to requirements of the State Constitution with reference to the State School Fund, it is also proper to take into consideration the provisions of Section 4, Article XII of the State Con-

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stitution, which provides that the State School Fund shall be derived from certain sources, among which is recited the following:

"Twenty-five per cent. of the sales of public lands which are now or may hereafter be owned by the State."

It appears from the language of the statute, above quoted, and the constitutional provision relating thereto that it was the purpose of the Legislature to require the payment of only twenty-five per cent. of receipts from the sale of lands in such forest projects to the State School Fund and in my opinion the Legislature did not intend and the statute does not require that twenty-five per cent. of receipts from the sale of products in connection with such projects should be paid into the State School Fund.

April 30, 1936.

FORESTRY DEPARTMENT—ARRESTS BY EMPLOYEES

Dear Sir:

Replying to yours of April 29th, in which you ask to be advised whether or not "*Anyone in the employ of the Florida Forest Service* has the right to arrest without warrant and take before the proper authority for prosecution, any individual who is caught in the direct act of burning the woods in violation of the *Forest Protection Act*," permit me to say:

We do not find a statute conferring authority upon employees of the *Florida Forest Service* to make arrests, either with or without warrant.

Section 8323 of the Compiled General Laws of 1927 names the officers who may make arrests without warrant. In addition to the Section above mentioned, there is a statute expressly conferring the power upon certain Traffic Officers to make arrests without warrant.

October 24, 1935.

FORESTRY DEPARTMENT—AGREEMENTS WITH FEDERAL
AUTHORITIES

Dear Sir:

I have your letter of the 12th instant enclosing copy of a letter from _____, Regional Forester, concerning the ability of Florida to qualify under the terms of the Federal Act, approved August 29, 1935 (PUBLIC—No. 325—74th Congress) (H.R. 6914), entitled "AN ACT To authorize cooperation with the several States for the purpose of stimulating the acquisition, development, and proper administration and management of State forests and coordinating Federal

FLORIDA BOARD OF FORESTRY

and State activities in carrying out a national program of forest-land movement, and for other purposes."

You enclose copy of said Act and state that the following questions present themselves to you in its application to Florida:

Sec. 1, Line 7: "Can Florida state officials enter into agreements mentioned? If so, can State Forester make such agreement? If he cannot who can?"

Sec. 2 (a), Line 3. "Has Florida a law which provides for reversion of title to state or political subdivision thereof of tax delinquent lands?"

Sec. 2 (g) "Does State law (Senate Bill No. 561, Acts of 1935) provide for such administration, development and management?"

Answering your first question it appears that the Florida Board of Forestry may under the provisions of Section 1 of Senate Bill 561, Chapter 17,027, Laws of Florida, Acts of 1935, enter into agreements with the Federal Government, mentioned in said Federal Act. The title to Chapter 17,027 appears to be broad enough to cover the provisions of Section 1 of said Act authorizing such agreements upon the part of the Florida Board of Forestry.

Answering your second question I refer you to Section 1027, Compiled General Laws of Florida, 1927, reading as follows:

"Where land is bid off by the tax collector for the State, the tax certificate shall be issued by the tax collector to the State, in the name of the Treasurer, and if the land is not redeemed or the certificate sold by the State, the title to the land shall, at the expiration of the time for redemption, vest in the State without the issuing of any deed, as provided for in other cases, and the certificate shall be evidence of the title of the State, and none of the provisions of this law providing for the issuing of a deed shall apply in such cases, and in all cases in which land or real estate has heretofore been sold or purchased by the State and the certificate has not been sold, or land or real estate not been redeemed, and the time for redemption is past it shall not be necessary for the State to procure a deed, but the title shall be held to be in the State, and the certificate shall be evidence of the title of the State."

The foregoing Section appears on its face to provide for the reversion of title to the State of tax delinquent lands. This Section, however, must be construed in connection with other tax statutes. Section 983, Compiled General Laws of Florida, 1927, provides for the redemption of tax delinquent lands. Section 985, Compiled General Laws of Florida, 1934 Supplement, also provides for the redemption of such

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lands at any time before a tax deed is issued therefor. Construing said Sections 1927, 983 and 985 together it appears that no absolute title is vested in the State of Florida covering delinquent tax lands but that the State merely holds a lien against such lands. This view is also held in the opinion of the Court in the case of *McNee vs. Wall, et al.*, 4 Fed. Supplement 496, headnote 6 of said decision specifically states that: "State does not become absolute owner of lands for delinquent taxes upon expiration of two-year redemption period." In the body of the opinion the Court uses this language: "The State is given a lien that continues in force until it is discharged by payment or is enforced by suit in equity." The Florida taxing statutes are specifically involved in this decision.

Answering your third question I refer you to Section 3 of Chapter 17,027, Laws of Florida, Acts of 1935, part of which reads as follows:

"* * * The said Board is, however, authorized, permitted and empowered to receive to hold the custody of and exercise the control of any lands, and to set aside into a separate and distinct and inviolable fund, the proceeds which may be derived from the sales of the products of such lands or the use thereof in any manner; and the proceeds of the sale of such lands, save the twenty-five (25) per cent of the proceeds thereof to be paid into the State School Fund as provided by the Constitution; and the said Board is authorized, permitted and empowered to use and apply such funds for the acquisition, use, custody, management, development or improvement of any lands vested in or subject to the control of such board. * * *"

In the above connection, I refer you to Section 5 of said Act making appropriation for State Forest purposes and for State Park purposes and I quote you Section 6 of said Act as follows:

"The moneys herein appropriated shall be placed at the disposal of the Governor, to be allocated by him on the recommendation of the Florida Board of Forestry for the management, development and acquisition of such lands as he may deem desirable and necessary for the expansion of the State forests and State park system in Florida."

While Section 2 of Chapter 17,027 provides for the management and control of lands acquired, it appears that under the provisions of Sections 5 and 6 the Florida Board of Forestry is also authorized to administer, develop and manage lands without actually acquiring the same when such lands are covered by an agreement between the Florida Board of Forestry and the Federal authorities under the terms of the above mentioned Federal statute.

This letter, I think, will suffice as a brief and in compliance with request I am enclosing two copies for you to transmit to the Regional Forester.

FLORIDA BOARD OF FORESTRY

October 8, 1936.

FLORIDA BOARD OF FORESTRY—DEPOSITING FUNDS IN LOCAL BANKS AND CHECKING AGAINST SAME

Dear Sir:

I am in receipt of your letter of the 6th instant requesting my opinion as to whether the Florida Board of Forestry may deposit funds in local banks in its own name and check against same in the disbursement of its funds.

It appears that the funds of the Florida Board of Forestry consist of appropriations by the State of Florida, funds received from the Federal Government and funds that may be received from individuals, corporations, cities and counties. Your inquiry would, therefore, apply to all funds received by the Board other than State appropriations which are necessarily from the State Treasury.

Your attention is called to Article IX, Section 4, of the State Constitution which provides that "no money shall be drawn from the Treasury except in pursuance of appropriations made by law." In this connection your attention is called to the several Appropriation Acts of 1929, 1931, 1933 and 1935, which re-appropriate Federal funds which may be received. Your attention is further called to Section 4151 (7), Compiled General Laws of Florida, 1927, relating to the State Board of Forestry, which reads as follows:

"Upon the presentation to the Comptroller of any accounts duly approved by the Florida board of forestry accompanied by such itemized vouchers or accounts as shall be required by him, the Comptroller is hereby authorized and required to audit the same and draw a warrant on the State Treasurer for the amount for which the account is audited, payable out of the funds received under the provisions of this Chapter, *or otherwise*, to the credit of the Florida board of forestry."

You will note in the above quotation that I have underscored the words "*or otherwise*". Said Section appears to contemplate that all funds received by the Florida Board of Forestry should be placed in the State Treasury and appears to be in effect a blanket appropriation of such funds.

In view of the above it appears that all funds received by the Florida Board of Forestry from the Federal government and from individuals, corporations, cities and counties, or I may say from any other sources, should be deposited with the State Treasury and upon presentation of accounts duly approved by the Florida Board of Forestry, accompanied by such itemized vouchers or accounts that shall be approved by the Comptroller, the Comptroller would be authorized

FLORIDA BOARD OF FORESTRY

and required to audit such accounts and draw warrants on the State Treasurer for the amount of same.

In connection with the above, your attention is called to Section 4151 (10-aa), Compiled General Laws of Florida, Permanent Supplement, originally Section 3 of Chapter 17,027, Laws of Florida, Acts of 1935, providing for a separate and distinct inviolable fund derived from the proceeds of the sale of the products or the use of lands acquired for State Forests or State Parks.

SECTION 20

TRUSTEES I. I. FUND

June 13, 1936.

TRUSTEES I. I. FUND—SHELL LEASE—DUVAL ENGINEERING AND CONTRACTING CO.

Dear Sir:

I have your letter of the 1st instant referring to the application of Duval Engineering and Contracting Company for Federal permit to dredge shell for commercial purposes from Sisters Creek, Hannah Mills Creek, Clapboard Creek and San Carlos Creek, tributaries of the St. Johns River near its mouth. You state that evidence was submitted that authority had been issued to the Bayshore Company by the Trustees of the Internal Improvement Fund to dredge shell in these areas and that this authority had been transferred to the Duval Engineering and Contracting Company. You further state that in reply to notices of this application issued by your office numerous complaints and objections have been received on the ground that the proposed dredging would ruin fishing grounds and destroy live oyster beds in these creeks and that you are in receipt of a letter from Hon. George W. Davis, Supervisor of Conservation, reading as follows:

"In view of the fact this involves an area in which the gathering of oysters and sport fishing are enjoyed by many residents of the Jacksonville area, I wish to protest against the issuance of said permits and shall thank you to advise me promptly as to your final determination in said matter."

You further state that it appears that one Department of the State has authorized the dredging of shell for commercial purposes and that another Department has requested that the permit be not issued. You further state that as the jurisdiction of the War Department is limited to those features of a project affecting the public rights of navigation, such question as the effect upon fishing or live oyster beds must be left to the State Department having jurisdiction. You then make request for advise as to which department of the State has the power to authorize dredging of shell for commercial purposes under circumstances such as exist in the present instance.

In reply your attention is called to Section 1438 (1), Compiled General Laws of Florida, 1934 Supplement, reading as follows:

"The trustees (of the) internal improvement fund of the State of Florida are hereby authorized to sell or lease any phosphate, earth or clay, sand, gravel, shell, mineral, metal, timber or water, or any other substance similar to the foregoing, in, on or under any of the sovereignty lands of the State of Florida,

TRUSTEES I. I. FUND

upon such terms and conditions as may seem most advisable to the said trustees and to the best interest of the State of Florida, the proceeds of such sales or leases to be credited to the trustees (of the) internal improvement fund."

Your attention is further called to that part of Section 1977 (108), Compiled General Laws of Florida, 1934 Supplement, reading as follows:

"The State board of conservation shall have and exercise exclusive power over the water bottoms in the State of Florida not held under some grant or alienation heretofore made and any bottoms heretofore granted, if cancelled or vacated, may be leased by said board for the purpose of giving the exclusive rights to plant oysters or clams thereon. * * *"

Section 1438 (1), above quoted, was originally Chapter 16,870, Acts of 1929. Section 1977 (108), above quoted, was originally Section 8 of Chapter 16,178, Acts of 1933.

I do not think that it was the intention of the Legislature in passing the latter Act to repeal the former Act. Neither do I think it was the purpose of the Legislature in passing the former Act to interfere with live oyster beds, especially if such beds should be of any particular consequence. It would, therefore, appear that the lessee of the Trustees of the Internal Improvement Fund would have full authority for dredging dead shell but I do not think the lessee would be authorized to disturb any worthwhile oyster beds and take live oysters thereon for shell purposes.

November 29, 1935.

**TRUSTEES I. I. FUND—MORTGAGE ON LANDS COVERED BY
TAX LIEN**

Dear Sir:

I have your letter of the 25th instant in reply to my letter of the 20th instant answering your communication of the 12th instant addressed to Mr. ———, Assistant Attorney General.

In your letter of the 12th instant you stated that you had a situation involving the title to certain real estate where the Trustees of the Internal Improvement Fund hold a purchase money mortgage; that a tax deed has been issued and you understood that the tax deed holder is in actual possession of the property; that you have been unable to find any authority as to the status of the purchase money mortgage and assume that it is barred by the tax deed; and if true it would assist materially in clearing the title if a record satisfaction or release could be obtained from the Trustees. You make inquiry if there is any procedure

TRUSTEES I. I. FUND

which could be followed to secure such a release of the mortgage held by the Trustees.

In my letter to you under date of the 20th instant I referred you to Chapter 15,641, Laws of Florida, Acts of 1931, now Sections 1771 (6) to 1771 (11), Compiled General Laws of Florida, 1934 Supplement, and called to you attention that under said statute neither a tax deed nor tax certificate extinguished the rights of the Trustees, and provision is made for redemption by the Trustees in such case.

In your letter of the 25th instant you state further that in the particular case in which you are interested the tax deed was issued in 1935 but was based upon a tax sale certificate sold to a private individual at the tax sale of the year 1927. You further state that you have made a search of the statutes in effect in 1927 and fail to find any statute then in existence covering the situation and that you do not believe, under the circumstances, the Act of 1931 could apply to your particular case.

The title to Chapter 15,641, above referred to, when taken alone may not show a clear intention upon the part of the Legislature for said Act to apply to lands previously sold by the said Trustees and on which they held purchase money mortgages when said Act was passed. However, the language of Section 1 of said Act indicates that it was the purpose of the Legislature that the Act should apply to lands sold prior thereto. You will note in Section 1 that reference is made to the sale of State lands made in the name of the State or in the name of any State agency "when such sale is *or has been made* upon the basis of partial payment or payments upon said lands or other property and the remainder or balance of payment or payments is *or was secured* by note or notes, in turn secured by mortgage or mortgages, or other paper or instruments * * *". It is, therefore, my view that construing this statute as a whole the Legislature intended for the same to apply not only to future transactions but to prior sales by the Trustees of the Internal Improvement Fund. It would, therefore, appear to apply to your particular situation, above mentioned. I wish to call your further attention to the fact with which you are probably already familiar that adverse possession does not run against the State of Florida.

The Trustees of the Internal Improvement Fund, I am confident, will be glad to consider any proposition you may wish to make for your client with reference to release or satisfaction of mortgage held by said Trustees. Such proposition may be submitted to Hon. Nathan Mayo, Commissioner of Agriculture, in whose office land matters are handled, for presentation to the Trustees. In this connection I may say while the statute makes provision for redemption of tax certificates and tax deeds after initiating foreclosure proceedings, I am confident that the Trustees will be glad to make such redemption on the basis prescribed in the statute prior to the bringing of such foreclosure proceedings.

TRUSTEES I. I. FUND

January 25, 1935.

AUTHORITY OF TRUSTEES OF I. I. FUND IN REFERENCE TO
SALE OF LANDS THE TITLE TO WHICH WAS OBTAINED BY
VIRTUE OF FORECLOSURE OF TAX SALE CERTIFICATES BY
COUNTIES UNDER CHAPTER 14,572, LAWS OF FLORIDA,
ACTS OF 1929, TAXES, PRICE OF SALE*Dear Sir:*

I have your letter in which you state that the Trustees of the Internal Improvement Fund hold title to certain lands by virtue of the foreclosure of tax sale certificates by several Counties of the State under Chapter 14,572, Laws of Florida, Acts of 1929. You request my opinion upon the following questions with reference to these lands, to-wit:

"(1) Whether or not state and county taxes shall continue against the land after the date on which the title vests in the said Trustees,

"(2) Whether or not, when the Trustees convey said lands, into private ownership, the said Trustees shall collect from the purchaser taxes for that part of the year which will elapse after the date of sale,

"(3) Whether or not when lands come to the Trustees of the Internal Improvement Fund by virtue of such Chapter, the law contemplates that only the original owner shall have the right to purchase,

"(4) Whether or not the law contemplates that when the Trustees receive what, in their judgment, is the best satisfactory offer for the lands, they may sell the same to any person who-soever."

It is my opinion:

As to your *first* question: Section 25 of Chapter 14,572, *supra*, being Section 1003 (13) Compiled General Laws, 1934 Supplement, provides that "the Trustees of the Internal Improvement Fund may hold and dispose of any such lands as provided by law with respect to other lands belonging to the Internal Improvement Fund". Lands owned by the Trustees of the Internal Improvement Fund are exempt from taxation because such lands belong to the State. See Section 897, Compiled General Laws of Florida, 1927. Taxes cannot be lawfully levied and assessed against the lands referred to in your letter during the time the title is vested in the Trustees of the Internal Improvement Fund because they are lands belonging to the State, and all lands of the State are exempt from taxation.

TRUSTEES I. I. FUND

As to your *second* question: The Trustees of the Internal Improvement Fund have authority to sell and dispose of those lands in the same manner as other lands are disposed of by them. See Section 25 of Chapter 14,572, *supra*. As to the manner of selling other lands, see Sections 1387, 1392, 1401, 1425, 1436, 1437, 1767-1769, Compiled General Laws. In the event of a sale, the Trustees are not required to collect from the purchaser the taxes that would have accrued against the lands if they had been subject to taxation during the period of time the Trustees held title thereto. If the Trustees so desire, they may include in the sale's price of those lands a sum equal to what the taxes would have been if the lands had been subject to taxation during the period of time that the Trustees have had title thereto.

As to your *third* question: The law permits the Trustees of the Internal Improvement Fund to sell these lands to any one who will comply with the terms of sale. There is no legal requirement that these lands be sold only to the person who had title to the lands at the time of the foreclosure suit which resulted in title being vested in the Trustees.

As to your *fourth* question: The Trustees of the Internal Improvement Fund may dispose of these lands in the same manner as provided by law with respect to the disposition of other lands to which they have title, and upon receipt of a satisfactory offer, they may sell these lands to any person whomsoever in the manner provided by law. See Sections of statutes cited under my answer to your second question as to the manner of sale.

July 11, 1935.

TRUSTEES I. I. FUND—SOVEREIGNTY LANDS—OIL LEASES

Dear Sir:

I have your letter of the 8th instant, requesting to be advised of the legal authority of the Trustees of the Internal Improvement Fund in the making of an oil and gas lease covering lands in Old Tampa Bay.

In reply I beg to say the bottoms of all navigable waters are vested in the State of Florida by virtue of its sovereignty and are known as "sovereignty lands". The lands in question are such lands.

As to the authority of the Trustees of the Internal Improvement Fund with reference to such sovereignty lands, I refer you to Chapter 15,642, Laws of Florida, Acts of 1931, charging the Trustees of the Internal Improvement Fund with the administration, management and control of said lands, included among which are sovereignty lands.

I also refer you to Section 1391, Compiled General Laws of Florida, 1927, vesting in the Trustees of the Internal Improvement Fund title to such lands.

TRUSTEES I. I. FUND

I also refer you to Section 1445, Compiled General Laws of Florida, 1927, particularly authorizing the Trustees of the Internal Improvement Fund to lease sovereignty lands for oil and gas purposes.

July 3, 1935.

**TRUSTEES I. I. FUND—HOUSE BILL NO. 1052 OF 1935,
CHAPTER 17272**

Dear Sir:

I am in receipt of your letter of the 1st instant with reference to House Bill No. 1052, Laws of Florida, Acts of 1935, which is an Act relating to the disposition of the proceeds of State lands and to the payment of special assessments or special levies of taxes thereon.

In reply to your inquiry I beg to say that the Act, as passed, does not in my opinion affect past obligations of the South Florida Conservancy District or the refunding of such past obligations, but it would appear to affect all strictly new obligations subsequent to the effective date of said Act.

SECTION 21

MOTOR VEHICLE DEPARTMENT

September 25, 1936.

MOTOR VEHICLES—REFUND OF AMOUNTS ADVANCED FOR
REGISTRATION BASED ON MILEAGE TRAVELLED— CON-
STITUTIONALITY OF CHAPTER 16085, LAWS OF FLORIDA.
ACTS OF 1933*Dear Sir:*

This is in reply to your letter of September 23, enclosing claims presented by Mr. _____, Attorney at Law, in behalf of Atlantic Greyhound Lines, a Virginia corporation, and East Coast Stages, Inc.

The enclosed claims are for a refund of registration fees collected for the operation of vehicles in Florida during the last half of the year 1933 and the years 1934-35 in excess of the amount figured on the basis of the actual number of miles travelled in Florida. Under the provisions of Chapter 15625, Laws of Florida, Acts of 1931, such a refund would have been proper. Said statute, however, has been superseded by Chapter 16085, Laws of Florida, Acts of 1933, which act has been in effect during the entire period for which refunds are claimed. Under this latter act, said corporations are not entitled to the refunds because their vehicles have been operated on a fixed and recurring schedule. Said corporations assert that Chapter 16085 is unconstitutional and invalid insofar as the provisions of it prevent them from recovering said refund. It is my opinion that the claims should be denied. To allow the claims would be to permit the Motor Vehicle Commission to pass upon the constitutionality of legislative acts, which is exclusively a judicial function.

August 6, 1936.

MOTOR VEHICLES—STORAGE CHECK—WAREHOUSEMAN'S
RECEIPT*Dear Sir:*

Replying to your favor of August 3rd., in which you ask whether or not a certain storage check issued by the E. & P. Garage of Jacksonville can be accepted as a warehousemans' receipt and form a basis upon which a warehouseman may offer a vehicle for sale without judicial proceedings, permit me to say:

Assuming that the original check or receipt was in the same form as the receipt No. 1752, and that the stub thereof was given to Mr. _____, who stored his motor vehicle in the E. & P. Garage; and as-

MOTOR VEHICLE DEPARTMENT

suming that all the provisions of Section 7002 of the Compiled General Laws of 1927 were complied with by the E. & P. Garage, I can see no reason why, under the provisions of said statute, the warehousemans' storage check No. 6978 could not be accepted as a warehousemans' receipt and form a basis upon which said warehouseman may offer the vehicle for sale without judicial proceedings.

I think, however, that before a title certificate is issued by the Motor Vehicle Department, that a full and complete description of the Motor Vehicle should be submitted to said department.

You will notice on the reverse side of storage check No. 1752 that the owner of the automobile identified by the storage check in accepting the receipt therefor agreed:

First, That the E & P Garage had the right to deliver said car to said holder of said receipt;

Second, That if said car was not called for within 60 days from the date of storage, said Garage should have to right to satisfy its lien for said storage, for any labor or material used in the repair of said car by a sale thereof as provided for in and by Section 7002 of the Compiled General Laws of Florida.

We are assuming that the stub which was given to Mr. Church from storage check No. 6978 contained the same agreement as that quoted above.

Any other and further deficiency in proof that the provisions of Section 7002 of the Compiled General Laws were fully complied with by the E & P Garage prior to the sale could be supplied by affidavits from the Manager or Managers of said Garage.

We are returning herewith the storage checks Nos. 6978 and 1752.

June 9, 1936.

MOTOR VEHICLES—"FOR HIRE" LICENSE—CONTRACT
CARRIERS OF U. S. MAIL

Dear Sir:

I am in receipt of your letter of the 29th ultimo making inquiry as to whether a private individual holding a contract from the Federal Post Office Department can transport bulk mail from the Post Office to the depot and from the depot to the Post Office should be required to secure a "For Hire" license tag in compliance with Section 1280, Compiled General Laws of Florida, 1927. You also make the same inquiry with reference to a party holding a contract to transport bulk

MOTOR VEHICLE DEPARTMENT

mail from the City of Lakeland to the City of Fort Myers and making deliveries to the Post Offices along the route traveled.

Said Section 1280 contains the following language: "For Hire", as defined in this Chapter shall include all motor driven vehicles or trailers hauled by motor vehicles in use for transporting persons, commodities or materials for compensation, or such motor vehicles as may be let or rented to another for a consideration." The said Section contains a proviso eliminating vehicles used by farmers for transportation of agricultural or horticultural products and also eliminating vehicles transporting school children under contract. These appear to be the only exceptions to the statutory definition of "For Hire" motor vehicles, as above defined.

Paragraph 12 of Section 1285, Compiled General Laws of Florida, 1934 Supplement, provides that motor vehicle license statutes shall not apply to any motor vehicle trailer or semi-trailer *owned or operated* by the Federal Government. This provision does not appear to cover owners of vehicles contracting with the Federal Government.

Your attention is further called to paragraph 14 of said Section 1285, which provides that the State Motor Vehicle Commissioner shall have authority to determine the classification of, and the amount of tax due on any motor vehicle required to be registered under the laws of Florida.

The above appear to be the only statutes directly relating to the subject of your inquiry and, in my opinion, a private individual holding a contract with the Federal Government for the transportation of mail for compensation, as recited in your inquiry, may properly be required to secure a "For Hire" license for his motor vehicle used in such transportation.

April 27, 1936.

MOTOR VEHICLES—TWO LICENSE PLATES

Dear Sir:

I am in receipt of your letter of the 21st instant enclosing copy of communication from _____, Director of the Department of Public Safety and President of the International Association of Chiefs of Police, of Miami, with reference to motor vehicles carrying a license plate on the front of the car as well as the rear. You make inquiry if the Motor Vehicle Department of Florida is authorized or can require the use of double license tags.

In reply your attention is called to Section 1283, Compiled General Laws of Florida, 1927, which requires that upon the filing of application for registration and the payment of the fee the motor vehicle shall

MOTOR VEHICLE DEPARTMENT

be assigned a distinctive number and there shall be issued and delivered to the owner a certificate of registration and "one number plate for each motor vehicle".

Your attention is further called to Section 1291 of the same compilation, which provides that no person shall operate a motor vehicle on the public highways of the State unless such vehicle shall have a distinctive number assigned to it "conspicuously displayed on a metal plate attached to the rear end of such vehicle".

Other motor vehicle statutes refer to "a license plate". I have made particular search of the statutes relating to the powers and duties of the Motor Vehicle Commissioner and I do not find any statute authorizing the Motor Vehicle Department to require the use of the double license tags.

April 20, 1936.

MOTOR VEHICLES, REFUNDS ON BUSES

Dear Sir:

I am in receipt of your letter of the 17th instant enclosing communication of Messrs. _____, Attorneys at law, submitting applications for East Coast Stages, Inc., and Atlantic Greyhound Lines for refunds on motor vehicle license taxes for the first half of the year 1935 in view of the provisions of Chapter 15,625, Acts of 1931, effective until July 1, 1935, under the amendatory statute, Chapter 16,086 of 1933.

In reply I beg to say that Section 1285, Compiled General Laws of Florida, 1927, as amended by Chapter 15,625 of 1931, provided among other things the following:

"Where any automobile is used for hire, whether for carrying passengers or freight either singly or in combination, over the highways of this State, in interstate commerce, a charge shall be collected in the form of a registration fee initially computed and assessed on the basis of the foregoing schedule, and the same shall be collected upon the registration of the vehicle as an advance payment on the compensation entitled to be received by the State for the use of the State's highway system, but the person, firm or corporation so registering or re-registering said vehicle shall be entitled to a refund of the entire amount collected with legal interest thereon upon making payment to the State for the mileage actually traveled by the vehicle in its use of the State's highway system, to be paid for at the rate of four cents per mile each way, which rate of four cents per mile each way is hereby determined and declared to be a reasonable and just compensation to be charged and collect-

MOTOR VEHICLE DEPARTMENT

ed for the use of the improved highway system provided by the State and its several counties, districts and municipalities for the use of motor vehicles. * * *

Assuming that the statements attached to the claims are correct it would appear that the claims are just and legal under the provisions of Section 1285, Compiled General Laws of Florida, 1927, as amended by Chapter 15,625 of 1936, and may be paid from "Motor Vehicle Refund Fund" under the provisions of Section 1304, Compiled General Laws of Florida, 1934 Supplement.

March 25, 1936.

MOTOR VEHICLE DEPARTMENT, PURCHASE OF TAG SAFETY
DEVICE

Dear Sir:

This is in reply to your inquiry of March 14, 1936. It would appear from your inquiry and enclosed correspondence that any doubt arising in connection with your right to enter into a contract for the use of a safety lock strip tag device arises by reason of the following language appearing in Chapter 16772, Laws of Florida, Acts of 1935, known as House Bill 1256:

"That no funds hereunder or otherwise shall be appropriated for the purpose of purchasing automobile safety devices or any expenditures made in connection therewith."

I have examined the Journals of the House and Senate of the 1935 Session of the Legislature and find that the language above quoted is incorporated in the statute through mistake and inadvertence and was not properly included in the Act as actually passed by both Houses of the Legislature. I find that the words above quoted were added by amendment to the original bill, were stricken by a Senate amendment which was not concurred in by the House, and the Senate amendment was submitted to a joint committee for further consideration. The joint committee recommended the adoption of the Senate amendment eliminating the above words, and this recommendation was adopted by both the House and the Senate. The Act as actually enacted contained the Senate amendment eliminating the above words from the Statute.

The above quoted words would, under the doctrine of

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constitute mere spurious matter appearing in the Act and would be just as ineffective as if never incorporated therein. It therefore follows that this provision, incorporated in the Act by mistake, is not in any way binding and should be entirely disregarded.

MOTOR VEHICLE DEPARTMENT

February 6, 1936.

MOTOR VEHICLES—MOTOR CARRIERS SECURING HALF-YEAR
LICENSE WHEN HOLDING CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY*Dear Sir:*

I have your letter of the 31st ultimo, making inquiry if you may issue for hire license to the ——— Motor Lines on the one-half year basis. I am also in receipt of a brief from the Honorable ———, Attorney at Law of Jacksonville, Florida, for consideration in connection with your inquiry.

It appears that said company has no certificate of public convenience and necessity from the Florida Railroad Commission or from the Interstate Commerce Commission, though it is claimed that application has been made to the Federal authorities for such certificate. The only statute providing for a half-year license to such companies, which I have been able to find, is contained in a proviso to Section 1284, Compiled General Laws of Florida, 1934 Supplement, reading as follows:

"Provided, however, that auto transportation companies holding certificates of public convenience and necessity may register semi-annually the commercial motor vehicles used by them under such certificates in their business and no registration or license shall be required to be paid during such semi-annual period as the same may not be registered and in use if the annual registration rate for the aforesaid motor vehicles is in excess of one hundred dollars, fee not included."

You will note that the language above quoted does not confine the certificate spoken of to a certificate from the State Railroad Commission, but is broad enough to include certificates from the Interstate Commerce Commission. You will note also that the statute does not grant the privilege to companies upon application for such certificates or upon being qualified to receive such a certificate.

It is therefore my opinion that a half-year for-hire license may not be issued to said company or any similar company until a certificate of public convenience and necessity is held by such company from the Federal authorities under the 1935 Motor Carrier Act or from the State Railroad Commission.

MOTOR VEHICLE DEPARTMENT

January 15, 1936.

MOTOR VEHICLES—LICENSE NON-RESIDENT OWNERS

Dear Sir:

I have your letter of the 14th inst., the first paragraph of which reads as follows:

"I wish to advise that _____, President of the Riverside Military Academy, Gainesville, Georgia, conducts a three months period of school at Hollywood, Florida, under the name of the Riverside Academy and brings into this state several motor vehicles used in the transportation of the students from the school to various towns adjacent to the Academy, and for the transportation of freight and other goods, required in the general operation of the school."

You make inquiry if such cars and the cars of teachers employed in this school are subject to motor vehicle license fees under the laws of this State.

In reply I refer you to paragraph 17, Section 1285, Compiled General Laws of Florida, 1934 Supplement, reading as follows:

"The provisions of law authorizing the operation of motor vehicles over the highways of the State of Florida by non-residents of this State when such vehicles shall be duly registered or licensed under the laws of some other State or foreign Country, shall not apply to any non-resident who shall accept employment or engage in any trade, profession or occupation in this State. In every case where a non-resident shall accept employment or engage in any trade, profession or occupation in the State of Florida, such nonresident shall be required to register his motor vehicles in this State if such motor vehicles are proposed to be operated on the highways of the State of Florida."

In view of the above it is my opinion that all such cars are subject to the motor vehicle license requirements under our laws.

December 2, 1935.

MOTOR VEHICLES, WEIGHT AND SPEED OF TRUCKS

Dear Sir:

This is in reply to your letter of November 27, 1935.

Chapter 16085, Laws of Florida, Acts of 1933, prescribes the maximum permissible gross weight of motor vehicles. It provides that no motor vehicle or combination of vehicles with pneumatic tires shall be operated

MOTOR VEHICLE DEPARTMENT

on a public highway of this State with a gross weight per vehicle, including the weight of the vehicle, in excess of 16,000 pounds, without special permission of the State Road Department or the Railroad Commission, or unless such vehicle is equipped with vacuum booster brakes, electric brakes or air brakes to safeguard the traveling public. If the motor vehicle is so equipped the maximum gross load is 18,000 pounds.

Section 1318, C. G. L. (1927) regulates the speed of motor vehicles and prescribes the limit at which the various classes of motor vehicles may be operated upon the highways of the State. The maximum speed of trucks depends upon the weight and whether or not operated in business or residential sections in cities or towns or on the highways outside the municipalities. This section provides that a rate of speed in excess of twenty-five miles per hour in the residential section of any city, town, or village, and a rate of speed in excess of fifteen miles per hour in the business section of any city, town, or village, and a rate of speed in excess of forty-five miles per hour on any public highway outside the corporate limits of any city or town of any motor vehicle weighing less than five thousand pounds shall be deemed prima facie evidence of reckless driving. This section further provides that a rate of speed in excess of fifteen miles per hour in the residential section of any city, town, or village, and a rate of speed in excess of ten miles per hour in the business section of any city, town, or village, and a rate of speed in excess of thirty miles per hour on any public highway outside the corporate limits of any city or town of motor vehicles weighing more than five thousand pounds and less than sixteen thousand pounds shall be deemed a violation of said section.

You inquire specifically concerning 1½ ton trucks and ½ ton pick-up trucks. The statutes do not appear to differentiate between these two types insofar as gross weight and speed is concerned, but the general provisions hereinabove referred to apply to both types of trucks.

January 29, 1935.

MOTOR VEHICLES—PURCHASE OF BY STATE RACING COMMISSION (CHAPTER 13810, LAWS OF FLORIDA, ACTS OF 1929—
SECTION 1363 (1) COMPILED GENERAL LAWS OF 1927,
1934 SUPPLEMENT)

Dear Sir:

This is in response to your oral inquiry of even date, with reference to the applicability of the above mentioned statute to the State Racing Commission, organized and existing under Chapter 14832, Laws of Florida, Acts of 1931 (Sections 4151 (49) et seq., Compiled General Laws of 1927, 1934 Supplement).

MOTOR VEHICLE DEPARTMENT

In line with my prior opinion of December 4, 1934, as well as my prior opinions and those of my predecessor in office, beginning with that under date of December 31, 1929, I again advise that the prohibition of the said Act of 1929 is against the purchase of motor vehicles by any State officials or employee for the use of himself or another; and there is no prohibition against the purchase of motor vehicles by a State Department or Board for its use as a governmental agency as distinguished from the use by a State officer or employee.

I am therefore of the opinion that the State Racing Commission may within its discretion purchase such motor vehicles as may be needed by it in the performance of its statutory duties, and pay the same out of any funds which are available for expenditure by the said Department as provided by law.

June 10, 1935.

MOTOR VEHICLES—REFUND ON HALF YEAR LICENSES

Dear Sir:

Answering your letter of the 7th instant with reference to refunds or allowances on half year motor vehicle licenses, I refer you to paragraph 11 of Section 3, Chapter 16,085, Acts of 1933, amending Section 1011, Revised General Statutes, being Section 1285, Compiled General Laws of Florida, 1927, reading as follows:

"Any owner whose vehicle has been destroyed or permanently removed beyond the State shall be entitled to deduct from any registration tax which may thereafter become due during the same year from such owner upon another vehicle, the pro rata of the annual registration fee or tax theretofore paid on each vehicle up to the time it was destroyed or permanently removed beyond the State; provided, however, that all "For Hire" vehicles which may be permanently removed beyond the State or destroyed may, upon the surrender of the tags and license, be entitled to a credit with the Motor Vehicle Commissioner for license upon any other vehicle during such year for the pro rata unexpired time of such license, which shall not be more, however, than one-half of such license period."

Your inquiry deals particularly with the latter part of the above quotation after the word "provided" and relates to "For Hire" Vehicles. Under this provision it appears that when a "For Hire" vehicle has been permanently removed from the State or destroyed and the tag and license thereof has been surrendered a credit is due for license upon any other vehicle during such year for the unexpired time of such half

MOTOR VEHICLE DEPARTMENT

year license, but such credit cannot exceed one-half of such half year license period.

I return herewith statement of facts attached to your letter.

January 29, 1935.

**MOTOR VEHICLES—FEES TO BE CHARGED BY MOTOR VEHICLE
COMMISSION FOR TRANSFER OF REGISTRATION AND FOR
TRANSFER OF TITLE CERTIFICATE—SECTIONS 1288 AND
3979, COMPILED GENERAL LAWS OF 1927**

Dear Sir:

This is in response to your communication of the 24th instant, wherein you ask whether or not you are authorized to make a charge of \$1.00 for the transfer of registration of and \$1.00 for the transfer of title certificate to, motor vehicles.

You will note that under Section 1288, Compiled General Laws of 1927, the same being Chapter 7275, Acts of 1917, Section 9, as amended by Chapter 8410, Acts of 1921, Section 7, a fee of \$1.00 is to be paid for the transfer of registration upon the sale of the motor vehicles mentioned therein. This has to do with the transfer of the license tag registration feature incident to the transfer of a motor vehicle, because of the tag following the car, and not the owner.

Under Section 3979, which is generally known as the Auto Theft Act, the same being Chapter 9157, Acts of 1923, Section 3, provision is made for a fee of \$1.00 for the issuance of a new certificate of title to the assignee of the old certificate of title.

It is my opinion that these two Acts require the performance of two separate functions having to do with two separate features of the transfer of a motor vehicle and the license registration, and that therefore, you are required to charge a fee of \$1.00 for each of the said services so performed.

October 2, 1936.

**MOTOR VEHICLES—SALE OF MOTOR VEHICLES BOUGHT IN BY
DEPARTMENT FOR REGISTRATION FEES**

Dear Sir:

I am in receipt of your letter of the 1st instant advising that under date of September 19, 1934, Mr. _____, Acting Motor Vehicle Commissioner, caused to be issued a tax warrant to enforce the payment of license fees for the operation of vehicles by the Southern Contracting

MOTOR VEHICLE DEPARTMENT

Company, B. C. Robinson, Inc., and B. C. Robinson, an individual, directing the Sheriff to levy and sell vehicles under Section 1273, Compiled General Laws of Florida, 1927, and further advising that on December 3, 1934, the vehicles were offered for sale to the highest and best bidder and were bought in by Mr. _____, as Motor Vehicle Commissioner. You further advise that these vehicles are still the property of the State; that they have not been stored in a warehouse or safe place and the value of the vehicles have decreased through exposure to the elements and by unlicensed parties removing certain parts. You also state that you have an offer from certain parties to purchase the entire lot which consists of nine vehicles for an amount considerably less than the license fees due the State, and you make inquiry if you have the right to sell the same at private sale or whether you should advertise and sell them to the highest bidder. You make inquiry also if suit should be brought to secure a deficiency judgment to cover the difference in fees assessed and the amount that may be obtained through sale.

In reply to your first question I beg to say that I do not know of any law requiring you to publish notice of such proposed sale but as a matter of public policy it seems to me publication of notice of sale should be made.

In reply to your second question with reference to suit for deficiency judgment in case of failure to realize a sufficient amount to cover the fees assessed, I beg to say there appears to be no grounds for any such suit based on the proposed sale, but a suit of this nature it occurs to me will have to be based on any deficiency that may have appeared between any assessed fees and the sale price in the first place to Mr. _____, as Acting Motor Vehicle Commissioner.

MOTOR VEHICLES—WIDTH AND HEIGHT

Dear Sir:

Replying to yours of October 2nd. permit me to say that:

Section 18 of Chapter 7275, Acts of 1917, was amended by Section 11 of Chapter 8410, Acts of 1921, the amended Act now appearing in the Compiled General Laws of 1927 as Section 1296 was not repealed by Section 1 of Chapter 10186, Acts of 1925, (Section 1318 Compiled General Laws).

The latter Act merely repealed all laws and parts of laws in conflict with its provisions and inasmuch as Section 11 of Chapter 8410, Acts of 1921, (Section 1296, Compiled General Laws) conflicts with Section 1 of Chapter 10186, Acts of 1925, (Section 1318, Compiled General Laws) only in regulation of *the rate of speed* that motor vehicles

MOTOR VEHICLE DEPARTMENT

may be operated upon public highways, the provisions of Section 1296, Compiled General Laws of 1927, providing that: * * *

"Motor vehicles, trailers and semi-trailers, operated upon the highways of this State, together with a load carried by same, shall not exceed seven feet in width, and twelve feet in height", has been held by this office to be a valid subsisting provision of law. See pages 565 and 566, Attorney General's Report for 1933 and 1934.

What has been said above, of course, does not apply to Motor Vehicles operating under permits from the State Railroad Commission. Such motor vehicles as to width, length, equipment, etc. is covered by Chapter 14764, Laws of Florida, Acts of 1931.

December 14, 1936.

MOTOR VEHICLE COMMISSIONER—LIABILITY OF BOND

Dear Sir:

Referring to our previous communications regarding this subject, I have now before me copy of bond apparently executed by the United States Fidelity and Guaranty Company as surety, with various named principals being employees of ———, former Motor Vehicle Commissioner of the State of Florida. The bond appears to be a blanket bond, and is executed in favor of the said ———, as Motor Vehicle Commissioner of the State of Florida, and his successors in office.

Upon reference to the statutes involved, I find that the bond which is required specifically, pursuant to law, is a bond to be executed by the Motor Vehicle Commissioner as principal, and a surety company as surety, in favor of the Governor of the State of Florida. The law thus contemplates a primary liability of the Motor Vehicle Commissioner. If such bond were given, then I am of the view that the latter bond is the one on which proceedings should first be had, inasmuch as the copy of bond which you have sent me, is not specifically provided for by law, but apparently represents an endeavor, on the part of said Motor Vehicle Commissioner, to protect himself in case of defalcations on the part of employees. I am of the view that if any actions are necessary, by reason of the failure of the Motor Vehicle Commissioner, to account for revenues, whether such failure result from defalcations of employees or not, such actions should be had on the bond given as required by law, and not on the bond which the Motor Vehicle Commissioner took for his own benefit, to protect himself.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
MOTOR VEHICLE DEPARTMENT

December 2, 1936.

AUTO TAG AGENCY—RIGHT OF PRIVATE INDIVIDUAL
TO ADVERTISE

Dear Sir:

This is in reply to your inquiry of November 28th, in which you request my opinion as to whether or not the letterhead on the stationery enclosed by you is permissible, which letterhead reads as follows:

"Chas. V. Baumgardner
Auto Tag Agency."

The law only authorizes the appointment of the tax collectors of the various counties as the official auto tag agents of the Motor Vehicle Department. It is therefore my opinion that it would be misleading for an individual to advertise his service as an auto tag agency.

SECTION 22

PARDON BOARD

December 23, 1936.

PARDON BOARD—RECORD REQUIRED OF APPLICANTS FOR
PARDON*Dear Sir:*

Replying to your favor of December 14th, in which you state that you have no precedent to follow in making up the record which is referred to in Section 8428, Compiled General Laws, and which is required to be transmitted to the Governor as a predicate for the issuance of a death warrant, and on which you ask my advice, permit me to say in the case of *Jarvis vs Chapman*, 118 Fla. 577, 159 So. 282, the Supreme Court made a statement of the documents necessary to constitute *the whole record of the conviction and sentence* contemplated by Section 8428, Compiled General Laws of 1927.

In its opinion the Court said:

"The whole record of the conviction and sentence which would place before the chief executive every matter necessary to show the jurisdiction of the Court, the existence of an indictment, the plea of guilty, or not guilty, the verdict of the jury, the judgment of guilt and sentence pronounced by the Court, and in case of writ of error from the Supreme Court, to the judgment of conviction and affirmance of such judgment by the appellate court, a copy of the mandate from the Supreme Court. Such a record would satisfy every requirement for certainty to a high degree so necessary in the carrying out of the 'most terrible and highest judgment of the law'."

SECTION 23

STATE PLANT BOARD

January 28, 1936.

COURTS—CONTEMPT PROCEEDINGS—INTERFERENCE WITH
STATE PLANT BOARD*Dear Sir:*

I acknowledge receipt of your letter of the 27th instant, and also copy of letter from Honorable Wilmon Newell, State Plant Commissioner, dated January 24, 1936, relating to contempt proceedings had before Judge Jefferson B. Browne of Key West against one Tedder for violation of the injunction granted against interference with the operations of the Plant Board for eradication of the Black Fly.

In your letter of January 14, 1936, you stated that the injunction was granted by three judges sitting together in the Eleventh Judicial Circuit, but did not give their names.

Monroe and Dade Counties under Chapter 17085, Acts of 1935, constitute the Eleventh Judicial Circuit.

Persons violating injunction orders issued by the Circuit Court or Judges of that Circuit may be cited for contempt before any of the Judges of the Circuit, but the usual practice in such cases is to bring the contempt proceeding before the Judge or Judges granting the injunction.

The Judges of the Eleventh Judicial Circuit as now constituted are Judge Jefferson B. Browne of Key West, and Judges Atkinson, Barns, and Trammell of Miami.

October 24, 1936.

STATE PLANT BOARD—RIGHT TO CARRY ON SPRAYING
OPERATIONS TO ELIMINATE CITRUS PESTS—IS STATE
PLANT BOARD REQUIRED TO COMPENSATE PROPERTY
OWNERS FOR DAMAGE TO PRIVATE PROPERTY?*Dear Sir:*

This is in reply to your letter of October 7, in which you state that the State Plant Board is carrying on a campaign in Key West to eliminate the blackfly by spraying operations before it can get to the mainland, which would result in an irreparable damage to the entire citrus industry of Florida. You request my opinion as to whether or not the State Plant Board must compensate persons for damage to private property resulting from the spraying operations. In other words, if no

STATE PLANT BOARD

compensation were provided, would such spraying operations constitute a taking of private property without due compensation contrary to the provisions of the State and Federal Constitutions.

In reply to your inquiry it is necessary to call attention to specific provisions of the statutes of Florida, which confer authority upon the State Plant Board. I call you attention to Section 3833, Compiled General Laws of Florida, 1927, and more particularly to the following provisions set forth in said section:

"(3) supervise or cause the treatment, cutting and destruction of plants when necessary to prevent or control the dissemination of insect pests and diseases or to eradicate same and to prescribe rules and regulations therefor; * * * (9) declare a dangerous insect pest or disease to be public nuisance as well as any plant or other thing infested or infected therewith or that has been exposed to infestation or infection and therefore likely to communicate same."

It is a well recognized principle of law that all property rights of an individual are held subject to the exercise of the police power. This principle is clearly stated in the opinion of the Supreme Court of Florida in the case of Tampa Northern Railway Company vs. City of Tampa, reported in 107 So. Rep. 364, text page 365:

"(2) Neither the 'contract clause' nor the 'due process clause' of the federal Constitution overrides the power of the state to establish necessary and reasonable regulations under its police power, a power which can neither be abdicated nor bargained away, and subject to which all property rights are held.

"(3) The enforcement of uncompensated obedience to a properly enacted reasonable police regulation for public health and safety is not an unconstitutional taking of property without compensation or without due process of law."

See also the case of Arundel Corporation vs. Griffin, reported in 103 So. 422.

The following discussions of several Louisiana cases contained in 67 A. L. R. 214 clearly states the principles which apply to the situation with which we are confronted:

"And in Louisiana State Bd. of Agri. & Immigration v. Tanzmann (1917) 140 La. 756, L. R. A. 1917C, 894, 73 So. 854, Ann. Cas. 1917E, 217, it was held that the destruction by legislative authority of orange trees infected by a disease for which no cure had been discovered, and which was highly contagious and infectious, was not a taking of private property for a public purpose without previous, adequate compensation, nor a taking of such property without due process of law, but was a competent exercise of the police power of the state. The court cited in analogy the

STATE PLANT BOARD

decision in *New Orleans v. Charouleau* (1908) 121 La. 890, 18 L. R. A. (N. S.) 368, 123 Am. St. Rep. 332, 15 Ann. Cas. 46, to the effect that the state, in the exercise of its police power, might authorize a city council to require cows to be inspected, and, if found tubercular, to be destroyed without compensation to the owner, and said: "The proposition that, though all the orange trees of the state may, in the meanwhile, be destroyed by citrus canker, the defendant should be allowed to maintain that disease in his grove on the chance that he may discover, and until he does discover, a remedy for it which may be less distasteful than the burning of the trees, is untenable. The owners of the other groves are entitled to protection now, before the destruction emanating from defendant's place overtakes their grove."

It is therefore my opinion that damage to private property which cannot reasonably be avoided in conducting necessary spraying operations does not constitute the taking of private property for a public purpose without just compensation but is a valid exercise of the police power of the State.

SECTION 24

STATE PLANNING BOARD

January 27, 1936.

STATE PLANNING BOARD—PURCHASE OF AUTOMOBILE

Dear Sir:

This is in reply to your inquiry of January 10, 1936, in regard to the legal authority of the Secretary of the State Planning Board to purchase a passenger automobile for the employees of that department.

If the automobile is to be purchased by the State Planning Board as such, it is my opinion, for the reasons stated in the opinion of my predecessor in office, under date of December 31, 1929, on page 156 of the Report of the Attorney General for 1929-30, that the purchase of such automobile would not be contrary to the provisions of Chapter 13810, Laws of Florida, Acts of 1929. The Secretary of the State Planning Board, however, would be prohibited as such by the terms of that statute from purchasing such an automobile.

December 4, 1935.

STATE PLANNING BOARD—CHAPTER 17,275, ACTS OF 1935—
MANNER OF HANDLING FUNDS*Dear Sir:*

This acknowledges your communication of November 25, 1935, with reference to the above matter.

Under the above mentioned statute the State Planning Board receives an appropriation from the general revenue fund of the State in the sum of \$25,000 per annum for the two years next succeeding the enactment of said statute. In addition thereto the Governor is authorized to direct the Board to make special surveys or studies and detail the Board or members of its staff to any State administrative department, and the expense of such study or survey is to be defrayed, if funds are available, by the bureau, educational institution or agency receiving the advantage of such study or survey; furthermore, the State Planning Board is authorized to receive money by appropriation or gift, and may also cooperate with County Planning Councils or other Planning bodies of the State, and may receive for services rendered an amount agreed upon.

The question you propound is with reference to the handling of such funds as are received by the way of grant or donation or payment for such services rendered; your specific question being whether such funds

STATE PLANNING BOARD

should be kept in a bank account administered by the Board or should be deposited with the State Treasurer and disbursed through the Comptroller.

It is my opinion that such funds should be deposited with the State Treasurer and handled through the Comptroller, and that such moneys so received constitute an addition to the appropriation as made from the general revenue fund, pursuant to the provisions of Section 3, which specifically provides: "The expenditures of the Board shall not exceed the amounts appropriated for the purpose by the Legislature of the State and other grants and donations to the Board actually then available." In other words, the purpose of the Act, with reference to these funds, was to consider such additional donations or payments as additions to the appropriation made.

SECTION 25

STATE BOARD OF SOCIAL WELFARE

June 13, 1936.

STATE BOARD OF SOCIAL WELFARE—COMPENSATION
INSURANCE*Dear Sir:*

I am in receipt of your letter of the 9th instant referring to my communication of the 3rd instant in reply to a communication from you relative to the above captioned subject. I quote herein as follows my above mentioned letter of June 3rd:

"I am in receipt of your letter of the 12th ultimo with reference to compensation insurance under the Workmen's Compensation Act for administrative employees of the State Board of Social Welfare and for laborers employed under said Board.

It does not appear that there has been any appropriation by the State for the activities of the State Board of Social Welfare but that its obligations were carried on largely through Federal appropriations which under the Federal Rules and Regulations are not permissible to be used for compensation insurance.

The Workmen's Compensation Act, Chapter 17, 481, Laws of Florida, Acts of 1935, in subdivision (e), paragraph 6 of Section 38 of said Act, provides as follows:

'(e) The State, its Boards, Bureaus, Departments and agencies and all its Political Subdivisions, who employ labor shall be deemed self-insurers under the terms of this Act unless they elect to procure and maintain insurance to secure the benefits of this Act to their employees and they are hereby authorized to pay the premiums for the said insurance.'

From the above you will note that the State Board of Social Welfare, a State agency, is authorized to provide for compensation insurance for its employees when funds may be received from any State or Federal source unless the statute providing for such funds or the rules and regulations adopted pursuant to such statute do not prohibit the same."

In your letter of the 9th instant you state that you are not quite sure whether you may interpret the last paragraph of the above quoted letter to mean that the State Board of Social Welfare is not liable under the Workmen's Compensation Act so long as it operates from funds granted under a statute pursuant to which rules and regulations have been made prohibiting the use of the funds for payment of compensation benefits or premiums on compensation insurance.

STATE BOARD OF SOCIAL WELFARE

Your attention is called to Section 4 of Article 9 of the State Constitution, reading as follows:

"No money shall be drawn from the treasury except in pursuance of appropriations made by law."

Paragraph (e) of Section 38, Chapter 17,481, Acts of 1935, known as the Workmen's Compensation Act, quoted in the above copied letter, has the effect of making all State boards that employ labor self-insurers under the Act unless they elect to procure and maintain insurance to secure the benefits of the Act for their employees. However, we must take into consideration the fact that the above mentioned board is without funds for the above mentioned purposes of compensation insurance. In such situation, I know of no method of enforcing any liability of the board under the statute except through a Relief Act by the Legislature when it may convene.

June 8, 1936.

STATE BOARD OF SOCIAL WELFARE—BORROWING MONEY

Dear Sir:

I am in receipt of your letter of the 5th instant, the first two paragraphs of which read as follows:

"I would like your opinion concerning the possibility of the State Board of Social Welfare, under its powers as a corporate body, borrowing money from banks and other financial institutions for the purpose of granting old age pensions. The collateral to be used with the banks would be orders from county commissioners to the State Comptroller directing him to deliver to the State Board race track money or other tax money collected by the State and distributed to the counties.

"This suggestion has been made by several county commissioners who feel that such a plan would make it possible for the State to participate in the old age assistance much earlier than if we wait until each county has money in hand for this purpose."

In reply I beg to say under the ruling of our Supreme Court in their advisory opinion to the Governor, 94 Fla. 967, 114 So. 850, I am very doubtful if the State Board of Social Welfare would be authorized to borrow money as above outlined by you.

STATE BOARD OF SOCIAL WELFARE

March 18, 1936.

STATE BOARD OF SOCIAL WELFARE, LIABILITY FOR DAMAGE
WHEN TRAVELING*Dear Sir:*

Your letter of March 5, together with copy of the reply of Mr. Graham, under date of March 7, has been called to my attention.

You inquire concerning the extent of the liability of the State and district Boards of Social Welfare, created by Chapter 17477, Laws of Florida, Acts of 1935, in cases where damage is done to individuals or private property by employees travelling on official business. Your question, of course, does not deal in any manner with the personal liability of the particular employees who might be involved in accidents.

In the case of Hampton vs. State Board of Education, reported in 105 So. 323, 90 Fla. 88, the Supreme Court of Florida made the statement that "the immunity of the State from suit arises where a contract or property interest of the State is involved". That case is authority for the proposition that suits against state officers, when the State, although not named in the suit, is the real party against which liability is sought to be enforced, cannot be maintained. It was held in an action instituted against the State Road Department, in the case of State ex rel. Davis vs. Love, 1226 So. 374, 99 Fla. 333, that such a suit could not be maintained even under the provisions of a statute purporting to authorize suits against the State Road Department.

It is therefore my opinion that the State and district Boards would not be liable for the damages resulting from the negligence of their employees because actions based on such negligent acts would be essentially suits against the State of Florida.

December 23, 1935.

STATE BOARD OF SOCIAL WELFARE—QUALIFICATION OF
MEMBERS OF BOARD*Dear Sir:*

I have your letter of the 21st inst., relative to the qualification of members of District Welfare Boards. You enclose communication from Mr. ———, under date of the 10th inst., wherein he questions being qualified to serve as a member of the District Board of Welfare by reason of being connected with an organization which sells considerable merchandise to relief organization units. He refers to Section 23 of Chapter 17,477, Laws of Florida, Acts of 1935, which is the Social Welfare Act of Florida, which reads as follows:

STATE BOARD OF SOCIAL WELFARE

"No social welfare official, member of a board, or employee of any such official or board shall sell or cause to be sold any supplies or property in which he is financially interested to the State Board or any of its duly constituted agents or agencies for use in furtherance of the purposes of this Act, nor shall any such be interested financially, directly or indirectly, in any contracts or agreements for the purchase of supplies or property for such use, or receive any commission or other gratuity upon any purchase or sale in connection with any form of public relief or care of the administration thereof. Any social welfare official or employee found guilty of violating any provision of this Section shall be guilty of a misdemeanor."

In reply to your inquiry I beg to say that I construe said Section to prohibit any one from being a member of a welfare Board under said Act who sells or causes to be sold any supplies in which he is financially interested to the State Welfare Board or any District Welfare Board under said Act. Any one having stock in an organization or being an agent or salesman of such organization receiving a regular salary or any other compensation in connection with the above mentioned sales would have a financial interest in such sales and would not be eligible to be a member of any of said Boards. Persons not connected with such an organization as stockholder or regular employee might also cause individual sales to be made by an organization and have some financial interest in such sales, in which case he too would not be eligible to be a member of one of said Boards. I may say in this connection that it is in the interest of public policy that no one should have any interest in the sales to any public board of which he may be a member.

January 17, 1935.

STATE BOARD OF PUBLIC WELFARE—DUTIES AND POWERS

Dear Sir:

I am in receipt of your letter of the 8th ultimo making several inquiries touching the powers and duties of the State Board of Public Welfare under the provisions of Sections 4130 and 4131, Compiled General Laws of Florida, 1927, reading as follows:

4130. "Said board shall annually on the fitness of every semi-public or private agency engaged in receiving and caring for afflicted, dependent, or neglected, or delinquent children and including the maternity homes and boarding houses for infants under three years of age, and agencies placing children out in private homes, and if a question of their fitness is raised by said board the matter may be determined by the circuit court sitting in chancery. Nothing in this Chapter shall be taken to

STATE BOARD OF SOCIAL WELFARE

apply to institutions under the control of the board of commissioners of State institutions."

4131. "No agency engaged in the care of defective, dependent, neglected or delinquent children, or in the placing out of such, and no maternity homes or hospitals, or boarding homes for infants under three years of age, shall operate after the first of January, 1928, without a license from the State board of public welfare said, license to be renewed annually at the discretion of the board; and any such license may be revoked for cause by said board on due notice to such licensee after affording an opportunity to be heard. In case a license is refused or revoked, appeal may be taken to the circuit court of the circuit in which the institution or agency is located."

In answer to your first inquiry, I beg to say that in my opinion child caring institutions are subject to license under the above quoted statutes not only when the children are maintained entirely by the institutions, but also when part of the maintenance of the children is paid for by others.

Answering your second inquiry, I beg to say that in my opinion maternity homes or hospitals, referred to in Section 4131 above, include a maternity ward in a hospital.

Answering your third inquiry, I beg to say that in my opinion the words "boarding houses for infants under three years of age," in Section 4130, limit the jurisdiction of the State Board of Public Welfare with reference to boarding houses for infants to those boarding houses caring for infants under three years of age.

Answering your further inquiry, I beg to say that I do not think that a home, in which a Mother lives with her infant under three years of age and pays board for herself and child, would on account thereof be subject to license under the above statutes.

November 25, 1936.

RECALL OLD AGE PENSION CHECKS NOT CASHED BEFORE DEATH

Dear Sir:

I have your letter of the 17th inst., in which you ask my opinion as to the policy which you should follow in regard to payments made to persons under the old age assistance program, where the recipient has died during the period covered by the payment but before the check has reached him. As stated by you in your letter the amount due to any person for the two weeks period, never exceeds \$15.00. You further state in your letter that the simplest method would be to stop payment on

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STATE BOARD OF SOCIAL WELFARE

the checks of the deceased persons and cancel such payments on your books.

On September 7, 1934, an opinion was rendered to the State Comptroller to the effect that a claim for pension under the State law can not be assigned, nor does it go to the administrator or descend to the heirs and that any balance of a pension due since the last monthly payment should not be paid to anyone.

It would be my suggestion that you provide in your rules and regulations that upon the death of a person under the old age assistance program prior to the cashing of his check that the check would be recalled or cancelled.

SECTION 26

MISCELLANEOUS

September 17, 1936.

FUNERAL DIRECTORS—REGULATION OF STATE BOARD OF
HEALTH REQUIRING FUNERAL DIRECTORS TO SIGN
TRANSIT PERMITS FOR DECEASED PATIENTS
AT STATE HOSPITAL

Dear Sir:

This is in reply to your letter of September 3, in which you inquire my opinion as to whether or not transit permits for the transportation of deceased patients at the Florida State Hospital must be signed by a licensed funeral director. Your letter contains the following statement:

"As you no doubt know, our death rate averages about one person per day, and a great many of these bodies are shipped to relatives for interment at the former home or to a place near relatives. This Institution has always employed licensed embalmers for the proper embalming and preparing for either burial in our own cemetery or for shipment, but these persons have never obtained a funeral director's license, and it has occurred to me that possibly as a State Institution we could be exempt from such requirement, which would impose considerable expense upon us."

I have written to the State Board of Health and they have furnished me with their rules and regulations including those adopted July 23, 1936. The following is Rule 1 (d) adopted on July 23, 1936:

"The Transit Permit shall bear the signature of the embalmer preparing the body for transportation and signature of funeral director and show the license numbers of the embalmer and funeral director issued by the State Board of Funeral Directors and Embalmers for Florida."

The purpose of such a rule is to promote and protect the public health and not to levy any tax. Assuming that such a rule is reasonable and within the scope of the authority of the State Board of Health to promulgate and enforce rules and regulations, it would apply to the transportation of all dead bodies. Assuming that such a rule provides a proper safeguard to the public health, it should apply to the transportation of all dead bodies without regard to the point of origin.

It is therefore my opinion that the full requirements in law should apply to the transportation of deceased patients from the Florida State Hospital at Chattahoochee.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
MISCELLANEOUS

August 5, 1936.

MILK CONTROL BOARD—LICENSES—PRODUCERS

Dear Sir:

This is in reply to your oral request for my opinion as to whether a man who produces milk and retails same to his own customers is required to obtain a license under the Milk Control Act. You inquire further the basis upon which the amount of such license should be computed.

It is my opinion that such a person must obtain a license under this Act. He is certainly a "milk dealer" under the provisions of Section 2 of the Act. The licensing provisions of the Act, contained in Section 9, require "milk dealers" to obtain licenses. The amount of such license is to be computed in accordance with the provisions of subsection (4) of said Section 9. While the word "receiving" in said Subsection (4) is somewhat vague, it is my opinion that the use of that word was not intended to limit the licensing provisions of the Act to distributors only. Construing all the provisions of the Act together, it is my opinion that the Legislature intended the word "receive," appearing in said Section 9, to have a very general application.

February 26, 1936.

MILK CONTROL BOARD—LICENSES—STORES CHANGING
LOCATION

Dear Sir:

With your letter of the 20th instant you submit copy of letter of the Great Atlantic and Pacific Tea Company, in which they request the change of address in two licenses issued under the second paragraph of sub-paragraph 4 of Section 9 of Chapter 17103, Acts of 1935, on which you request my opinion.

Under this provision of the statute the license is issued to the store for the sale of milk at retail in a particular market. The answer to the question depends in my opinion upon whether it is an application for a transfer of the license issued to one store to another store, or whether it is for the same store moved from one location to another.

As a general proposition, licenses are not transferrable except when made so by statute. There is no statute specifically authorizing the transfer of the license issued under the provision of law above referred to. I do not believe a license issued to one particular store could be used for any other store, either in or out of the same market, as defined in the Act. If, however, the store to which the license is issued actually moves,

MISCELLANEOUS

I think the same license could continue to be used at another location within the same market.

I do not think, however, that a license issued for a store in one county could under any circumstances be used in any other county.

August 24, 1935.

MILK CONTROL BOARD—TRAVELING EXPENSES OF DIRECTOR

Dear Sir:

I have your favor of the 19th inst., from which I note that the contention has been made that the provision in Senate Bill No. 444, Chapter 17103, Acts of the Legislature of 1935, fixing the compensation of the Director of Milk Control at a sum not to exceed \$3,600 per annum, payable monthly, to be fixed by the Governor, includes all the travelling and other expenses of the Director of the Milk Control Board and that your office should not allow and approve expense accounts of the Director.

While there is no reference in Senate Bill No. 444 to travelling expenses to be allowed the Director, yet Chapter 16184, Laws of Florida, Acts of 1933, fixes and provides for the payment of the maximum amount to be allowed officers and employees when travelling on State Business. Inasmuch as the Act requires the Director to maintain a residence and office in Tallahassee, I am of the opinion that his actual expenses should be allowed for time a director is required to be absent from the Capital on State business requiring his absence and that such expenses should be limited as provided by Chapter 16184 of the Laws of Florida, Acts of 1933.

April 25, 1935.

PHYSICIANS AND SURGEONS—CHIROPRACTIC

Dear Sir:

I am in receipt of your letter of the 22nd instant, making inquiry as to the law regulating the practice of chiropractic in the State of Florida.

In reply your attention is called to Sections 3435 to 3462, Compiled General Laws of Florida, 1927, being originally Chapter 9350, Acts of 1923. Your particular attention is called to Sections 3442 and 3443.

Under Section 3442 persons desiring to practice chiropractic in this State must make application to the Florida State Board of Chiropractic Examiners. Each applicant is required to be a full time graduate of a recognized chartered chiropractic school or college and having a course of three years of not less than six months each requiring not less than 3,000 hours actual attendance.

MISCELLANEOUS

Under Section 3443 applications are required to be accompanied by a fee of \$25.00 for the first examination or a fee of \$10.00 for a second examination. This Section also provides that the Board may grant a license without examination to licentiates of Board from other States who meet the requirements of the Florida Act and satisfy the Board of the intention to become a bona fide resident and practitioner in this State and shall have passed the examination under the Board where he was licensed and presents a certificate from such Board showing that he is of good reputation and has practiced at least one year in the State in which he was licensed. A fee of \$50.00 is required to be charged for issuing a license by reciprocity. For further information, I refer you to Dr. D. I. Rainey, Tallahassee, Florida, one of the members of the Board of Examiners of this State.

January 17, 1935.

EMBALMERS—ANNUAL RENEWAL LICENSE FEE

Dear Sir:

Answering your letter of the 11th ultimo, I beg to say that the annual renewal license fee of embalmers is fixed by Section 8, Chapter 10,120, Acts of 1925, now Section 3606, Compiled General Laws of Florida, 1927, as five dollars per annum, and the State Board of Embalmers has no authority to change said license fee.

August 20, 1936.

CITRUS FRUIT COMMISSION—CHAPTER 16860, LAWS OF FLORIDA,
ACTS OF 1935—LIABILITY OF CITRUS FRUIT DEALER'S
BOND FOR ADVERTISING ASSESSMENTS

Dear Sir:

I have received your inquiry under date of August 13, 1936, requesting information of me upon two questions, which may be stated as follows:

1. Whether the bond required of a citrus fruit dealers under Chapter 16860, Laws of Florida, Acts of 1935, is liable for advertising assessments made against citrus fruit dealers.
2. Whether you are authorized to withhold license from any citrus fruit dealer against whom a claim for advertising assessment is pending and unpaid, for the previous season's operations.

I am of the opinion that both of your questions should be answered in the negative.

MISCELLANEOUS

Chapter 16860, above referred to, provides for the giving of bond by a citrus fruit dealer, conditioned for the compliance with the provisions of Chapter 16860, and for the performance of all *contracts* made by the citrus fruit dealer. There is no provision in said Chapter 16860 relative to the advertising assessments, and the advertising assessments provided for by other chapters of the law, are not contracts within the legal meaning of that term. Furthermore, there is no provision in said Chapter 16860 authorizing you to withhold license under the circumstances indicated. I may state that the chapters providing for such advertising assessments are complete within themselves, and provide for various penalties for failure to pay the same.

August 21, 1936.

CHAPTER 16854, LAWS OF FLORIDA, ACTS OF 1935—WHETHER PER
DIEM AND TRAVELLING EXPENSE OF MEMBERS OF CITRUS
COMMISSION CONSTITUTES OVERHEAD

Dear Sir:

This refers to your communication of June 30, 1936. Since receiving that letter, various conferences have been held concerning the matter set forth, which explains why you have not received an earlier reply.

While your letter is somewhat broader in its request for information I understand, after conference, that the question as to which you wish to be advised is this: Does the per diem and mileage allowed to members of the Florida Citrus Commission by Section 3 of Chapter 16854, Acts of 1935, constitute overhead expense within the meaning of Section 8, Sub-section 3 of said Act, so that it falls within the maximum limitation of \$30,000 therein set forth?

After a careful examination and consideration of the entire Act, and particularly in view of its context, I am of the opinion that such per diem and mileage to members of the Commission, was not intended to be, and is not, covered by the limitation in said sub-section 3, relative to overhead expenses.

July 23, 1936.

CHAPTER 16860, LAWS OF FLORIDA, ACTS OF 1935—CITRUS FRUIT
LICENSE AND BONDING ACT—SCOPE OF BOND

Dear Sir:

This refers to your letter of July 16th, 1936, in which you ask whether a citrus fruit dealer's bond, given under the provisions of Chapter 16860, Laws of Florida, Acts of 1935, is liable for any claim other than one made

MISCELLANEOUS

by a producer, or in behalf of a producer, or citrus fruit for a failure to carry out contracts relative to the purchase of citrus fruit.

More specifically, you ask whether the bond of a citrus fruit dealer would be liable for a claim for unpaid commissions due to a broker acting for said dealer in the purchase of citrus fruit.

I am of the opinion that under the provisions of said Act such a bond would be liable to the extent of such unpaid commissions, provided, of course, that in no case can the aggregated accumulated liability under such bonds exceed the amount named therein.

The Act in question provides that no persons shall act as a citrus fruit dealer without having first obtained a license as therein provided; it further provides that before any such license is granted by the Commission the applicant must deliver to the Commissioner a good and sufficient cash bond or surety bond as therein provided; and goes on to provide in Section 3 thereof in part as follows:

"* * * * Said bond shall be in the form approved by the Commissioner and shall be conditioned upon compliance with the provisions of this Act and upon faithful compliance with the conditions of all contracts, verbal or written, made by the citrus fruit dealer with producers and/or any person contracting with the citrus fruit dealer relative to the purchase, * * * of citrus fruit * * *."

The above provisions made it clear that the condition of such bond is amply broad to include such liability as that to which you refer.

July 23, 1936.

CHAPTER 16860, ACTS OF 1935. CITRUS FRUIT LICENSE AND
BONDING ACT; CONTINUATION OF BOND

Dear Sir:

In your letter of the 21st instant you ask to be advised whether a continuation certificate attached to a citrus fruit dealer's bond required by Chapter 16860, is a sufficient compliance with the requirements of said Act. This, I assume, is based on the assumption that the bond required by said Act and the license issued thereunder run for one year.

Section 3 of Chapter 16860 provides:

"Every such bond shall continue in force and effect until notice of the termination thereof is given by registered mail to the Commissioner, and every such bond shall set forth such fact."

There is no requirement for annual renewal of the bond since it is specifically provided that it shall continue in force and effect until ter-

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minated by notice. This does not mean, of course, that you would not have the authority to require an increase in the amount of the bond, where the citrus fruit dealer in his business as such, exceeds the number of boxes of citrus fruit as set forth in his application for license.

January 11, 1936.

CITRUS FRUIT LICENSE AND BONDING ACT, CHAPTER 16860 OF
1935—"CASH BUYER" DEFINED

Dear Sir:

This is in reply to your inquiry of December 31, requesting my opinion as to who would be designated a "cash buyer" under the terms of Chapter 16860, Laws of Florida, Acts of 1935, more commonly referred to as "License and Bond Law."

Section 1 of that Act contains the following definition:

"(g) The term 'cash buyer' means and includes any person who purchases any citrus fruit in Florida from the producer thereof for the purpose of resale."

The above stated definition of the term "cash buyer" is sufficiently comprehensive to include any purchaser of citrus fruit from the producer who purchases said citrus fruit for the purpose of resale, regardless of whether a cash or credit transaction is involved. It is to be noted in this connection that the term "cash buyer" is included in the more general classification of "citrus fruit dealer" as defined by the Act and that the license and bonding provisions of the Act apply to the persons who are classified as "citrus fruit dealers," which of course includes "cash buyers."

Section 2 of said Act exempts those particular "cash buyers" who pay cash at the time of the sale from the requirement of obtaining a license. It is my opinion that the only persons who would be exempt from obtaining a license under the Act would be a "cash buyer" who purchases citrus fruit from the producer and pays cash at the time of the sale. It is my further opinion that the transaction must be a complete and independent transaction and not simply a part performance of a general contract previously entered into for the purchase of citrus fruit.

January 8, 1936.

SALARIES—EXPENSES MEMBERS OF FLORIDA CITRUS
COMMISSION, CHAPTER 16,854 OF 1935

Dear Sir:

I have your letter of the 8th instant containing the following:

"A member of the Florida Citrus Commission, at the request

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of the Commission, made a trip to Washington for a conference with Commissioner of Agriculture Wallace concerning the Federal Grade and Pack of Citrus Fruits. He was in Washington and en route fourteen days, for which time he charges the regular per diem of \$10.00 per day. He also charges his Railroad and Pullman fare amounting to \$51.75; no charge is made for subsistence while on this trip.

"Please advise me whether, under the provisions of Chapter 16854, Acts of 1935, the above charges per diem, Railroad and Pullman fare are legitimate."

In reply your attention is called to the last part of Section 3 of Chapter 16854, Laws of Florida, Acts of 1935, relating to compensation of members of the Commission for attendance upon Board meetings, reading as follows:

"* * * No member of the Commission shall receive any salary or other compensation but each member of the Commission shall receive the sum of Ten Dollars per day for each day spent in actual attendance in meetings of the Commission to cover his personal expenses while in attendance, together with mileage at the rate allowed by law to State employees for each mile actually traveled to and from all regular and special meetings of said Commission."

Your attention is also called to Section 6 of said Act providing for the deposit of monies with the State Treasurer when collected and also providing as follows:

"* * * Said moneys shall be kept in said General Inspection Fund and are hereby appropriated and made available for defraying the expenses of the Commission and of the administration and enforcement of all provisions of this Act. * * *"

Your attention is also called to Section 7 of said Act reading as follows.

"That all salaries, costs and expenses incurred in the administration and enforcement of this Act shall be paid out of the General Inspection Fund.

"All salaries, costs and expenses incurred in the enforcement of the provisions of this Act shall be paid out of such General Inspection Fund upon vouchers approved by the Commissioner and warrants issued thereon by the Comptroller of Florida.

"All salaries, costs and expenses incurred by the Commission in the performance of its duties and the exercise of its powers under this Act shall be paid out of such General Inspection Fund in the following manner: vouchers shall be submitted by the

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Commission to the Commissioner and he shall forthwith submit such vouchers to the Comptroller for issuance of warrants thereon."

Your attention is also called to Section 8 of said Act providing that the powers and duties of said Commission shall include certain powers and duties enumerated in six separate paragraphs. Paragraph 6 of said Section reads as follows:

"To incur such reasonable obligations and expenses as may be necessary and proper for the discharge of its powers and duties hereunder or under other existing laws, and to have such obligations and expenses paid out of the funds authorized by law to be collected and expended."

The Act makes mention of related Federal control and provides for cooperation with the United States Department of Agriculture.

You will note that the provisions of Section 3 of said Act, above quoted, relate to compensation for attendance upon regular and special meetings of said Commission.

You will note also that the statutes above quoted referring to other expenses of the Commissioners make no mention of any per diem.

In consideration of the above it is my opinion that the Commissioner would be entitled to his actual and necessary expenses for such trip to Washington by request of the Commission. I would, therefore, suggest that the statement be amended by reciting the actual living expenses while in Washington and en route in lieu of the per diem of \$10.00 per day.

November 20, 1935.

CITRUS FRUIT LICENSING AND BONDING LAW—CHAPTER 16860,
ACTS OF 1935—APPLICABILITY TO CANNERS OF CITRUS FRUIT

Dear Sir:

This acknowledges your communication of the 19th, wherein you inquire whether the provisions of the above Act apply to canners of citrus fruit, that is whether such canners are required to procure license and post the bond provided for by said Act. By canners I understand you to mean individuals engaged in the business of buying citrus fruit for the purpose of canning or otherwise preserving the same and re-selling it to the public.

You will note that a "citrus fruit dealer" as defined in Section 1, sub-section K, includes a dealer as defined in sub-section J of said Section 1; in the latter sub-section the term dealer includes "every person other than a producer, consignor, commission merchant, consignment

MISCELLANEOUS

shipper, cash buyer, broker or agent who in any manner makes or attempts to make money or any other thing of value on any citrus fruit by dealing in the same in any manner whatsoever."

It is my opinion that these individuals engaged in the purchase of citrus fruit for the purpose of processing the same by canning it and then re-selling it to the public, are making money or attempting to make money by dealing in citrus fruit, and that, therefore, they are amendable to the provisions of said Act of 1935, and should be licensed and bonded thereunder in accordance with its provisions.

September 23, 1935.

CITRUS FRUIT INSPECTORS, WORKMEN'S COMPENSATION

Dear Sir:

I have your letter of the 19th inst., in which you request the opinion of this office as to whether or not employees in the Department of Agriculture engaged in work in the Citrus Fruit Division, who are employed from sixty to ninety days during the year would be temporary employees or if they would come under the provisions of the Workmen's Compensation Act.

In reply, I beg to state that "casual" employees, under the provisions of the Act, are defined as those engaged in employment where the work contemplated is to be completed in not exceeding ten working days, without regard to the number of men employed, or where the total labor cost is less than \$100. See Subsection paragraph (a), under Paragraph 2 of Section 2, Workmen's Compensation Act.

It is my opinion that those employed by your Department for sixty to ninety days each year would come under the provisions of the Workmen's Compensation Act during the term of their employment.

January 18, 1935.

MILK CONTROL BOARD—COMPENSATION OF EMPLOYEES

Dear Sir:

I am in receipt of your letter of the 8th instant, enclosing copy of communication under date of the 7th instant from Hon. _____, Director Milk Control Board, with reference to balance due Mr. _____, who was employed by said Board and was killed in an automobile accident on or about December 15, 1934. Attached to Mr. _____ letter is a statement of account with Mr. _____ showing a balance due him in the sum of \$194.51 for expenses, which statement appears to have been prepared and checked by a Deputy for the Milk Control Board.

MISCELLANEOUS

You make inquiry as to whether Mr. _____ will have the right in this particular case to sign a requisition for the balance due Mr. _____.

If the amount due consisted of wages instead of expense money the same might be paid to the widow or other certain relatives under the provisions of Sections 7068 and 7069, Compiled General Laws of Florida, 1927, upon bill signed and filed by such widow or relative and approved by Mr. _____ as Director of the Milk Control Board. Since the amount due to Mr. _____, deceased, consists of expense money due him, it is my opinion that bill for same should be made and filed by the legal representative of the estate of said Mr. _____, deceased, and approved by Mr. _____. Proof should also accompany said bill showing authority of the legal representative.

Enclosed find statement of account returned herewith.

September 29, 1936.

MILK CONTROL BOARD—ISSUANCE OF LICENSE TO PERSON NOT
MAINTAINING DISTRIBUTING PLANT BUT WHO DELIVERS
MILK INDEPENDENTLY ON MILK ROUTE

Dear Sir:

This is in reply to your letter of September 25, with enclosed letter of Mr. _____.

Mr. _____ refers in his letter to a certain groceryman who has a small milk route in connection with his store. This grocer had been buying milk from a milk plant and delivering it in his grocery truck although he did not deliver groceries along with the milk route.

You request my opinion as to whether or not under Chapter 17103, Laws of Florida, Acts of 1935, commonly known as the Milk Control Act, this grocer is entitled to a license authorizing him to maintain such a milk route.

Section 2 of the statute above referred to defines "milk dealer" as follows:

"'Milk Dealer' means any person who purchases or handles milk within the State, for sale in this State, or sells milk within the State in any market as defined in this Act. Each corporation which if a natural person would be a milk dealer within the meaning of this Act, and any subsidiary of such corporation, shall be deemed a milk dealer within the meaning of this definition. A producer who delivers milk only to a milk dealer shall not be deemed a milk dealer."

Section 9 of the statute deals with licenses. The following is subsection 1 of Section 9:

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"No milk dealer, as defined in this Act, shall buy milk from producers or others for sale within this State, or sell or distribute milk therein unless such dealer be duly licensed as provided in this Section, and it shall be unlawful for a milk dealer to buy milk from or sell milk to a milk dealer who is unlicensed, or, in any way deal in or handle milk which he has reason to believe has previously been dealt in or handled in violation of the provisions of this Act."

It is quite obvious that this grocer would come within the definition of "milk dealer" as set forth in Section 2 and that he would be subject to a license as a "milk dealer" under Section 9. The term "milk dealers" in Section 2 of the Act is very comprehensive and it is to be noted that it is the "milk dealer" that is licensed.

October 9, 1936.

EVERGLADES NATIONAL PARK COMMISSION—CHAPTER 15,642 OF
1931—TIDAL LANDS—TAXATION

Dear Sir:

I am in receipt of your letter of the 7th instant referring to Chapter 15,642, Laws of Florida, Acts of 1931, and making certain inquiries with reference thereto. Said Statute is an Act authorizing and charging the Trustees of the Internal Improvement Fund with the supervision of State lands not vested in some other State agency and authorizing the Trustees to protect said lands and bringing certain suits in connection therewith.

As to the meaning of the words "tidal lands" and related inquiries, I refer you to Volume 21 of Florida and Southern Digest, Title, Navigable Waters, and I particularly refer you to the following cases: State vs. Gerbing, 56 Fla. 603, 47 So. 353; Brickell vs. Trammell, 77 Fla. 544, 82 So. 221; Apalachicola Land and Development Co. vs. McRae, 86 Fla. 393, 98 So. 505; Martin vs. Busch, 93 Fla. 535, 112 So. 274. Further answering your inquiries I beg to say that this office has had occasion at times to bring ejectment proceedings but I do not recall any case particularly based upon the above mentioned statute. With reference to your fourth inquiry relating to taxation I beg to say the tax laws of the State are administered by the State Comptroller and it is the custom of this office not to advise with reference to tax statutes unless requested by the State Comptroller. In this connection, however, I refer you to Section 893 (1), Compiled General Laws of Florida, Permanent Supplement, which was originally enacted as part of Chapter 15,639, Acts of 1931. This Section provides that no taxes shall be levied by any taxing district against lands or other property of the State of Florida, except for the purpose of improving the physical condition of such lands or property and only upon

MISCELLANEOUS

the approval of such levy by the State agency in which title is vested or having jurisdiction over same.

I also refer you to Section 953 (1) of the same compilation, which provides for Tax Collector to give notice to proper State officials of taxes due on State lands and to make a notation under the same date of such notice on the tax roll and unless such notation is made any non-payment by the State or its agency of taxes or special assessments shall not constitute a delinquency or be the bases on which the said lands may be sold for non-payment of such taxes or of special assessments.

Answering your further inquiry I beg to say that I do not see any relation between the above mentioned statute, Chapter 15,642, Acts of 1931, and the game laws of the State.

This office is required to advise certain State officials and certain boards but is not authorized to give out opinions generally. You will, therefore, not consider the above as an opinion from this office but merely as an effort to give you some assistance in solving the matters mentioned in your letter.

October 21, 1936.

STATE BOARD OF FUNERAL DIRECTORS AND EMBALMERS—
CONSTRUCTION OF SECTION 8 OF CHAPTER
17032. ACTS OF 1935.

Dear Sir:

This is in reply to your letter of October 19, in which you request my opinion concerning the right of a person engaged in the practice of Funeral Directing and Embalming at the time of the passage of Chapter 17032, Acts of 1935, who has not applied for a license to apply at the present time for a license under Section 8 of the Act and receive a license from the Board without complying with the other requirements, such as taking an examination, etc. The pertinent provisions of said Section 8 read as follows:

"Any person who at the time of the passage of this Act is actively engaged in the profession or business of funeral directing and who is the proprietor, owner, or partner of a firm owning such an establishment or business, or is the principal stockholder of a corporation engaging in such a business or conducting such an establishment, *shall* within thirty days apply to the Board on a form prescribed by said Board, and upon payment of a fee of \$10.00 such person shall be entitled to, and the Board shall issue a license as a funeral director, which license shall remain in force and effect until the first day of the year following the issuance of such license. Thereafter such person or persons shall renew such license or licenses, as herein provided." (*Italics ours.*)

MISCELLANEOUS

The answer to the question propounded by you will depend upon the construction to be placed upon the word "shall," appearing in the statutory provisions above set forth. If the word "shall" is to be construed as mandatory, the right to receive a license without taking an examination and complying with the other requirements of the Act would have expired thirty days after the date on which Chapter 17032, Acts of 1935, became effective. If, however, the word "shall" is to be construed as permissive rather than mandatory, then the State Board of Funeral Directors and Embalmers would have the right to extend the period within which a funeral director may apply for a license.

It is my opinion that the purpose of the Legislature in enacting Chapter 17032, Acts of 1935, is better served by the latter construction. It is clear from reading the entire statute that the Legislature intended to regulate the profession of funeral directing and emblaming for the purpose of establishing and maintaining high standards of efficiency in the profession, both in the interests of the profession and the public. The Legislature clearly stated that those persons engaged in that profession at the time of the enactment of the statute under consideration were to be considered as eligible for a license under the new act. The requirement that such persons apply for a license under the new act within thirty days could neither add nor detract from the qualifications of those persons to engage in the practice of their profession, which qualifications were recognized by the Legislature. The logical purpose of such a provision would then be restricted to accomplishing the prompt administration of the licensing provisions of the Act.

In view of the principles above stated, it is my opinion that the State Board of Funeral Directors and Embalmers would have the authority to grant licenses under the provisions of said Section 8 hereinabove set forth after the period of thirty days has expired when it has been made to appear to the satisfaction of the Board that the applicants have a sufficient excuse for their failure to obtain their licenses within the thirty day period.

November 28, 1936.

CITRUS FRUIT DEALER—DISBURSEMENT OF PROCEEDS OF
CHECKS EXECUTED BY SURETIES ON BONDS UNDER
CHAPTER 16860, ACTS OF 1935.

Dear Sir:

This is in reply to your inquiry of November 19. You request my opinion as to the legal disposition of three checks, two of which are payable to the State of Florida and show on their face that they are in payment of claims arising under Citrus Fruit Dealers License Bonds and the other check being for the purpose of depositing a cash bond under Chapter 16860, Acts of 1935.

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Section 3 of said statute provides in part as follows:

"Said bond shall be to the Governor of the State of Florida and his successors in office, in favor of every persons with whom the applicant deals in the purchase, delivery, sale and accounting of sales of citrus fruit."

In view of this statutory provision it is my opinion that you are the proper party to dispose of the proceeds of the first two checks.

Section 3 of Chapter 16860 also provides that the applicant for a license must deliver to the *Commissioner* a good and sufficient cash bond or surety bond. The third check in the amount of \$100.00 should therefore be endorsed to the Commissioner of Agriculture to be held by him as a cash bond.

December 7, 1935.

STATE EMPLOYMENT BOARD—CHAPTER 17,270, ACTS OF 1935—
WHETHER ACT IS IN EFFECT

Dear Sir:

This acknowledges your communication of December 6, 1935, wherein you call attention to the fact that Section 10 of the above mentioned Act provided that said Act should not take affect "unless and until the Congress of the United States shall pass and same shall become a law, the Bill now pending in said Congress known as the 'Economy Security Act' No. S. 1130, also known as the 'Social Security Act. No. H. R. 7260'".

You ask to be advised whether either of the above mentioned Acts has become a law so that the contingency provided therein has been met.

You are advised that H. R. 7260, known as the Social Security Act, became a law on August 14, 1935, (42 U. S. C., Sections 301 et seq.; Aug. 14, 1935, c. 531, 49 Stat.)

I, therefore, advise that said Chapter 17,270 is in effect.

November 1, 1935.

Dear Sir:

I have your letter of the 31st ult., in which you request my opinion as to when payments of expense accounts of members of the State Employment Board should be made, under the provisions of Chapter 17270, Laws of Florida, Acts of 1935.

Section 2 of the Act provides that

"Members of said Board shall be paid only their actual ex-

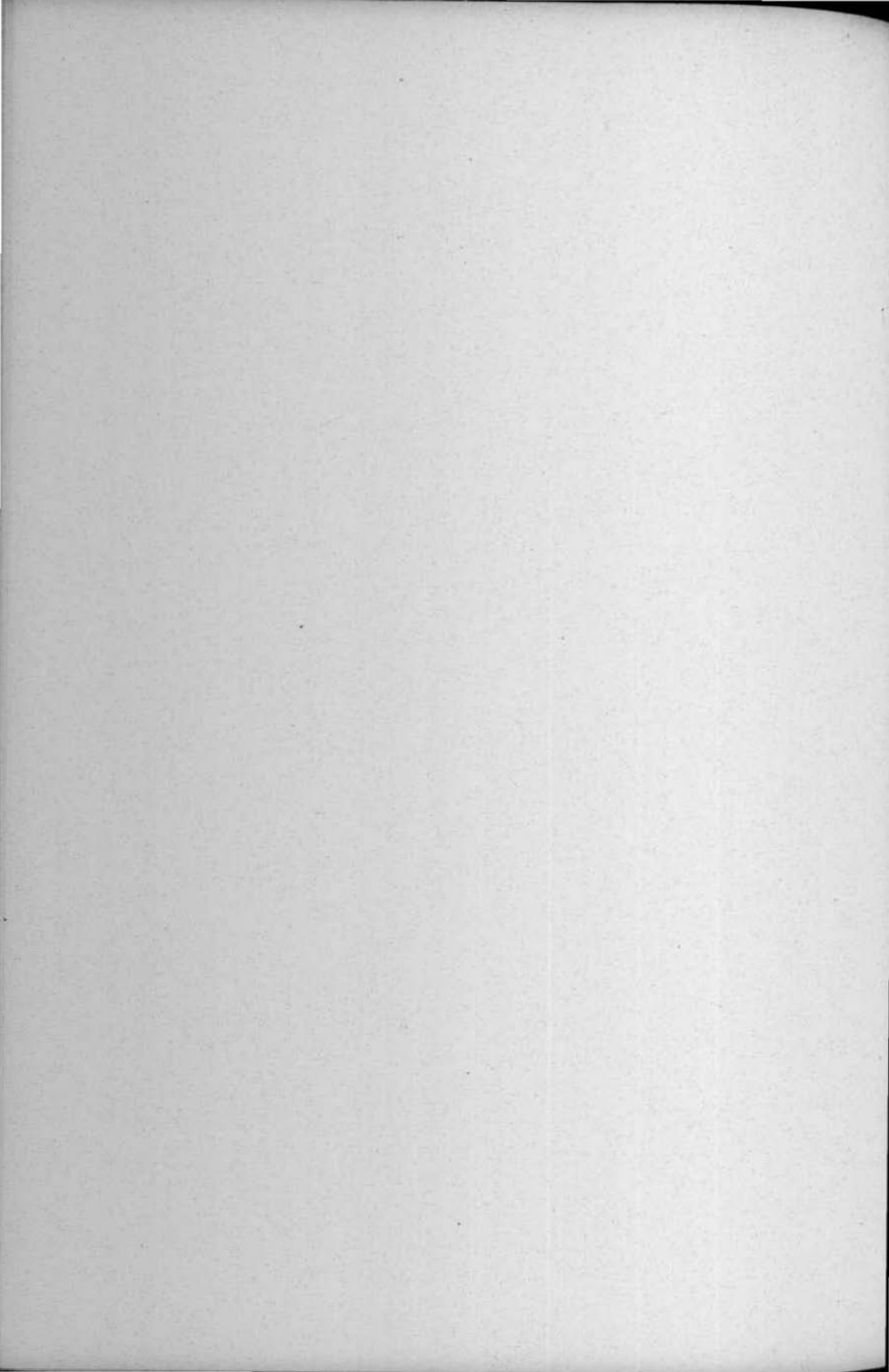
penses while in the performance of their duties, and in travelling to, and from, or upon the same, the accounts for which shall be paid quarterly by the State Treasurer upon itemized vouchers duly approved by the Chairman of said Board and the Comptroller."

This provision clearly makes the payment due at the end of each quarter. Section 8 of the Act provides how such quarterly accounts for travelling expenses shall be handled, i. e., upon presentation to the Comptroller of such quarterly accounts duly approved by the Employment Board and accompanied by the itemized vouchers as required by the Comptroller, he is authorized to audit the same and draw a warrant on the State Treasurer for the amount for which the account is audited. In other words, only quarterly accounts should be audited and approved for payment.

CHAPTER X

INSURANCE AND SURETIES

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INSURANCE AND SURETIES

SECTION 1

INSURANCE

August 31, 1936.

INSURANCE—SOUTHEASTERN UNDERWRITERS ASSOCIATION— PROPOSED AGREEMENT DOES NOT VIOLATE ANTI-TRUST LAWS

Dear Sir:

This is in reply to your letter of August 24, in which you enclose a letter from Mr. ———, together with printed form of agreement proposed to be entered into between the Southeastern Underwriters Association and various insurance companies. You inquire whether the proposed contract violates the laws of Florida, particularly the anti-trust laws.

The anti-trust laws of Florida are set forth in Sections 7944 to 7954, inclusive, Compiled General Laws of Florida, 1927. It is my opinion that the proposed agreement does not violate these provisions.

August 21, 1936.

SICK AND FUNERAL BENEFIT INSURANCE—VALIDITY OF RE- DEEMABLE COUPONS ATTACHED TO POLICY

Dear Sir:

This is in reply to your inquiry of August 13, requesting my opinion as to whether or not the following provisions may be legally included in a coupon proposed to be attached to a policy of sick and funeral benefit insurance:

"This coupon is redeemable on or after the date of same for a sum equal to one weekly benefit under this policy provided no such benefits have been paid during the previous twelve months and provided further that premiums under this policy have not been in arrears more than one week in the previous twelve consecutive months."

Policies of sick and funeral benefit insurance must not exceed limits defined in Section 6260, Compiled General Laws of Florida, 1927, which said section reads in part as follows:

"Sick and funeral benefit insurance is hereby defined as any policy, contract or agreement whereby a company, corporation or association stipulates to provide for the insured either medi-

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cal attendance, medicine, care during disability caused by sickness or injury, expenses of funeral in case of death, or the money necessary for any or all of the aforesaid purposes in lieu of such services. All policies, contracts and agreements to be hereafter made or entered into, for sick and funeral benefit insurance as herein defined, shall not be written, made or entered into except as provided herein;"

It is my opinion that such a proposed coupon would be invalid in view of the provisions of law hereinabove set forth.

July 16, 1936.

INSURANCE—PROPOSED FIVE-YEAR ANNUAL PAYMENT PLAN

Dear Sir:

This is in reply to your request for my opinion concerning the validity of a proposed "rider" to be attached to and made a part of a policy of insurance issued by General Insurance Company of America.

The insurance policy, without the "rider," is a one-year policy. The "rider" is in words and figures as follows:

"FIVE YEAR ANNUAL PAYMENT ENDORSEMENT"

In consideration of the intention of the insured to purchase insurance, under this policy, for five successive years, it is understood and agreed that this policy may be renewed for four successive years by the issuance of properly countersigned Renewal Certificates and that the premiums charged thereunder shall be \$..... per annum.

No insurance shall exist hereunder beyond the expiration date of this policy or last renewal certificate.

Attached to and forming a part of Policy No. issued by the INSURANCE COMPANY OF AMERICA.

.....
Agent.

(NOTE TO AGENT: The policy must be issued for one year only.)"

It is contemplated that the insured has the option of renewing the policy of insurance from year to year for four years after the first year, upon payment of 75% of the premium stated in the policy.

Several objections have been urged against the validity of such a proposed "rider." It is urged in the first instance that such a proposed "rider" is discriminatory; secondly, that such a proposed "rider" would provide for an unlawful rebate. In my opinion neither of these objections is well taken.

INSURANCE

Discrimination and rebating are not inherently unlawful, but become such only by virtue of statutes denouncing them. The following is from 32 C. J. 1193:

"Discriminations and Rebates. In the absence of statutory prohibition discriminations or rebating as to premiums is not illegal. Discounts may be allowed by the company for prompt payments of premiums; and a discount allowed belongs, in the absence of an agreement to the contrary, not to the agent, but to insured."

I do not find that the Legislature of Florida has enacted any statute making discrimination unlawful, except as applied to policies of life insurance. See Section 6225, Compiled General Laws of Florida, 1927. This would dispose of any objection based upon discrimination.

I do find, however, that the Legislature of Florida has enacted statutory provisions prohibiting the practice of rebating. These provisions are also included in Section 6225, Compiled General Laws of Florida, 1927. The particular provisions referring to rebating read as follows:

"No insurance company or association, by itself or any other party, and no insurance agent, solicitor, or broker, personally or by any other party, shall offer, promise, allow, give, set off or pay, directly or indirectly, as inducement to Insurance on any risk in this State now or hereafter to be written, any rebate of, or part of the premium payable on the policy, or on any policy, or of agent's commission thereon, or earnings, profit, dividends or other benefit founded, arising, accruing or to accrue on such insurance or therefrom, or any other valuable consideration or inducement to or for insurance which is not specified, promised or provided for in the policy contract of insurance; nor shall any company or association, agent, collector or broker, personally or otherwise, offer, promise, give, sell or purchase as inducement to insurance or in connection therewith, any stocks, bonds, securities or property, or any dividends or profits, accruing or to accrue thereon, nor, except as specified in the policy contract, offer, promise or give any other thing of value whatsoever as an inducement to insurance."

From the statutory provisions above set forth, it is clear that the Legislature intended to prohibit special privileges constituting rebates to individual policyholders, not provided for under the terms of the insurance contract. Statutes prohibiting the practice of rebating have for their general purpose the enforcement of uniform rates among policyholders of the same class. See 32 C. J. page 1194.

"Rebate" is defined in Words and Phrases, 1st Series, Vol. 7, page 5986, as follows:

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"In insurance rebates are deductions from stipulated premiums allowed in pursuance of antecedent contract. *State v. Hibernia Ins. Co.*, 38 La. Ann. 465, 467."

It is therefore my opinion that the proposed "rider" is not in conflict with any statutes prohibiting discrimination or rebate.

You inquire further whether the policy with the "rider" incorporated is a five-year policy or a policy for one year renewable annually for four additional years. It is my opinion that it is five-year policy of insurance.

January 9, 1936.

INSURANCE COMPANY INVESTMENTS—MORTGAGES OF FEDERAL
HOUSING ADMINISTRATION

Dear Sir:

In your letter of the 8th instant you request my opinion as to whether it will be proper for you as Insurance Commissioner to treat Federal Housing Administration insured mortgages in the same investment classification as corporation bonds, in passing upon investments of insurance companies applying for certificates of authority under the laws of Florida.

Insurance companies under the provisions of Section 4249, Revised General Statutes of Florida (6199, C. G. L.), before being certified by you as authorized to transact any business of insurance in this State, shall have invested in bonds of the United States, of any State or any county or municipality in the United States, or mortgages, or deeds of trust on improved, unencumbered real estate worth not less than 50% more than the amount loaned thereon, at their market value, the following amounts as to the respective classifications, to-wit:

Foreign insurance companies	\$250,000
Domestic insurance companies	\$100,000
Foreign life insurance companies	\$200,000

Beyond the investment requirements of said Section 4249 of the Revised General Statutes, as a prerequisite to the right to a certificate of authority to transact business in the State, there is no requirement in the laws of Florida as to any other or further investment by such insurance companies, nor as to the character of the securities in which the funds of such companies may be invested.

It follows, therefore, that beyond the requirements of Section 4249, Revised General Statutes, there is no statutory duty devolving upon you to classify the securities in which the funds of such insurance companies are invested, except to the extent of ascertaining their values in determ-

INSURANCE

ining the question of the right of such companies to transact business as solvent surety companies, and in so doing there is nothing to prevent you from treating Federal Housing Administration insured mortgages as of equal dignity with corporation bonds.

In other words, as to all investments by insurance companies beyond the requirements of Section 4249, Revised General Statutes, the matter of determining the solvency of such companies depends upon the actual value of such investments, rather than their classification or character.

August 17, 1935.

SICK AND FUNERAL BENEFIT INSURANCE

Dear Sir:

In reply to your letter of the 7th inst., in which you enclose contract captioned "Park's Plan Option Contract for Undertakers" and in which you request an opinion as to whether or not individuals, firms or corporations issuing this form of contract in the State of Florida would be affected by the provisions of Chapter 17070, Senate Bill 104, Laws of Florida, approved May 7, 1935, I beg to state that it seems to me the form of the contract is in conflict with Section 2 of Senate Bill 104, which reads as follows:

"Section 2. That from and after the passage of this Act, it shall be unlawful for any Life Insurance Company, Fraternal Benefit Society, Sick and Funeral Benefit Insurance Company, or any company, corporation or association engaged in a similar business, to contract or agree to furnish funeral merchandise or services in connection with the burial of any person or persons upon the death of any person insured by such company, corporation or association until after the death of the insured and until the loss has been paid in cash by the insurer."

The contract enclosed, taken as a whole, insures the holder of the contract against the payment of the difference between the wholesale and retail price of caskets, vaults, burial clothing, services of an undertaker or funeral director, ambulance and hearse services, for the payment of a consideration by the persons termed in said contract as "optionees."

The benefits under such contract accrue only upon the happening of a contingency, that is, the death of some of the optionees, and this right expires unless payments are continued monthly. It will be seen from an inspection of the contract that it has all the elements of an insurance policy, the optionor agreeing to furnish goods, wares, merchandise and services to the optionees at the wholesale price thereof, thus insuring to the optionees the difference between the wholesale and retail costs of such goods, wares, merchandise and services, the difference between the

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wholesale and retail costs being the benefits insured to the optionee, the contract or option being the policy guaranteeing them, and the payment of the sums of money by the optionees being the premiums required to keep the policy in force. Failure to pay renewal premiums monthly would cause the policy (contract) to lapse and the amount of previous payments (premiums) would be forfeited to the optionor.

In the case of *STATE ex rel. LANDIS vs. DeWITT C. JONES COMPANY*, 108 Fla., page 619 of the text, the Court held:

"Sick and funeral benefit insurance is hereby defined as any policy, contract or agreement whereby a company, corporation or association stipulates to provide for the insured either medical attendance, medicine, care during disability caused by sickness or injury, *expenses of funeral in case of death*, or the money necessary for any and all of the aforesaid purposes in lieu of such services."

The contract which you enclose, it is true, provides for the payment of only part of the expenses, that is, the difference between the actual cost thereof and the amount usually charged as profit for conducting such funeral and furnishing such funeral supplies and is an insurance contract to that extent. In the case of *STATE ex rel LANDIS vs. DeWITT C. JONES COMPANY*, supra, page 618 of the text, the Court held:

"Whether or not a contract is one of insurance is to be determined by its purpose, effect, contents and import and not necessarily by the terminology used, and even though it contain declarations to the contrary. So. Surety Co. v. Austin, 17 S. W. (2) 776; Allin v. Motorists Alliance, 28 S. W. (2) 23. Nor is it essential that loss, damage or expense or expense indemnified against necessarily be paid to the contractee. It may constitute insurance if it be for *his benefit* and a contract on which he, in case of a breach thereof, may assert a cause of action. Allin v. Motorists Alliance, supra; 63 A. L. R. 715."

The contract which you enclose, measured by this definition, is a contract for the benefit of the person to whom issued and which he could assert a cause of action in case of breach thereof by the optionor, the measure of his damages being the reasonable value of such supplies and costs, which he would have to outlay in addition to such actual cost.

I am therefore of the opinion that the contract enclosed and such other contracts of kindred nature, come within the provisions of Chapter 17070, Senate Bill 104, Laws of Florida.

INSURANCE

May 2, 1935.

INSURANCE, AGENTS ON COMMISSION BASIS

Dear Sir:

In your letter of the 1st instant, you refer to Section 1 of Chapter 13663, Laws of Florida, Acts of 1929, as amended by Section 1 of Chapter 14741, Laws of Florida, Acts of 1931, and as whether an insurance agent who receives from his company "an allowance for office rent, clerical help, or other agency expenses in addition to a fixed commission on the business written" would be considered as being "on a strictly commission basis."

It is my opinion that as defined by Section 1 of Chapter 14741, Acts of 1931, a person who solicits, negotiates, or effects contracts of insurance, surety, or indemnity for any insurer, and receives therefor any compensation other than or in addition to a commission on a percentage basis, cannot be classed as an insurance agent. This, of course, is a very strict construction of the statute, but that such a strict construction was intended by the Legislature is denoted by the use of the word "strictly" immediately preceding and qualifying the word "commission" three times in the amendatory act.

So if there is an allowance for office rent, clerical help, or other agency expenses by the insurer as compensation or remuneration or a part thereof to the person who solicits, negotiates, or effects contracts of insurance, surety, or indemnity, then it removes such person from the class of those who solicit, negotiate, or effect contracts of insurance, surety, or indemnity, on a strictly commission basis, and they cannot under the definition of the Act in question be classed as insurance agents.

June 5, 1935.

INSURANCE COMPANY WRITING BONDS AND ENDOWMENT BONDS

Dear Sir:

Replying to your letter of the 4th instant, there is no statutory prohibition or objection to a life insurance company being authorized in its charter to write bonds and endowment bonds.

I return herewith the certificate of the proposed amendment to the charter of Suwannee Life Insurance Company which was transmitted with your letter of the 4th instant.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
INSURANCE

May 22, 1935.

INSURANCE, AGENT'S LICENSE UNDER CHAPTER 14741 OF 1931

Dear Sir:

In your letter of the 22nd instant you ask whether the extension by an insurance company to its agent of the privileges of using the company's office with clerical assistance, postage, etc., which expenses are paid directly by the company, disqualifies the agent from receiving a license under Chapter 14741, Laws of Florida, Acts of 1931.

I do not think the fact that the agent is allowed to use the office and even the clerical assistance of the company and postage, would disqualify the agent as such, where the company maintains such office and clerical assistance for its own use, and where the same is not furnished to the agent as a part of the consideration for the business of soliciting, negotiating, or effecting contracts of insurance, but merely as an accommodation to the agent.

As to your second question, on the basis of the facts stated in your letter, I do not think the agent of General Exchange Insurance Corporation is so interested in or connected with General Motors Acceptance Corporation, as to preclude him from the right to a license under Clause E of Section 3 of Chapter 14741, Laws of Florida, Acts of 1931.

SECTION 2

SURETIES

June 27, 1936.

POWER TO EXCHANGE BONDS HELD BY STATE TREASURER AS
CUSTODIAN UNDER CHAPTER 16482, SPECIAL ACTS OF 1933*Dear Sir:*

This is in reply to your letter of June 24.

You state that by virtue of the provisions of Chapter 16482, Special Acts of 1933, you hold as custodian certain bonds of St. Lucie County School District No. 11, which were turned over to you by the Tax Collector of Indian River County. You state that said bonds were acquired by the Tax Collector of Indian River County in the payment of current taxes of Indian River County.

While you do not so state in your letter, I have been advised that Indian River County acquired said bonds by reason of the fact that they constituted obligations which were assumed by Indian River County when the latter county was created.

For the purpose of this opinion, I must assume the constitutional validity of Chapter 16482, which has not, to my knowledge, been challenged in the Courts. The purpose of said statute is set forth in Section 5 thereof. It is my opinion that you have no right to exchange bonds acquired in payment of taxes under the provisions of said statute for other bonds.

In connection with the construction of Chapter 16482, see my opinion under date of August 21, 1933, appearing at page 102 of the Biennial Report of the Attorney General for the years 1933-34.

June 12, 1936.

EXEMPT TRANSACTIONS UNDER SECURITIES ACT

Dear Sir:

This is in reply to your verbal request for my opinion as to the proper construction of Subsection (k) of Section 5 of Chapter 14899, Laws of Florida, Acts of 1931, as amended by Section 4 of Chapter 17253, Acts 1935, in the light of certain facts and circumstances stated by you. You state that a corporation with an authorized capital stock not exceeding \$10,000 wishes to have several of its salesmen sell said corporate stock and receive compensation for thier services in connection with the sale of same. You further state that the sale of stock will be so limited that the total number of shareholders in the corporation will not exceed twenty.

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Subsection (k) reads as follows:

"The sale of its shares by any corporation organized under the laws of this state when the total number of shareholders does not and will not after such sale exceed twenty and the total face amount or the total sale price of such shares does not exceed ten thousand dollars; provided, that such securities are issued and disposed of *for the sole account of the issuer* in good faith and not for the purpose of evading the provisions of this Act." (Italics ours.)

You inquire whether the words "for the sole account of the issuer" would take the sale of such corporate stock out of the category of exempt transactions under the Securities Act, if the salesmen receive compensation for selling the stock. It is my opinion that if the salesmen are regularly employed by the corporation in connection with its usual business and if the compensation which they receive from the sale of the stock is paid directly by the corporation and is not taken directly by the salesmen from the proceeds of the sales of the stock, the transaction is exempt under the provision of the statute hereinabove set forth. Under the circumstances outlined above the stock would be issued and disposed of for the sole account of the issuer. If the salesmen are regularly employed in the usual business of the corporation and are not professional stock salesmen it would appear that the sale of stock would be in good faith and not for the purpose of evading the provisions of the Securities Act.

January 2, 1936.

SECURITIES ACT—CHAPTER 14899, ACTS OF 1931, AS AMENDED BY
CHAPTER 17253, ACTS OF 1935—"INTEREST IN OR UNDER
A PROFIT-SHARING OR PARTICIPATION AGREEMENT OR SCHEME"

Dear Sir:

This is in reply to your request for my opinion as to whether or not the form of contract designated "Service Contract" submitted by you comes within the provisions of the Securities Act.

Section 5 of the proposed contract reads as follows:

"5. The corporation may enter into like contracts with any other individual or individuals holding leased oyster property and may, at its option, pool all oysters harvested from State Lease No. ——— together, and remit to the owner or owners thereof in proportion to the number of acres held by him or her."

It is my opinion that the proposed contract, by reason of the provisions hereinabove set forth, constitutes a security within the meaning

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of Section 1 of Chapter 14899, Acts of 1931, as amended by Section 1 of Chapter 17253, Acts of 1935. This section defines a security as including, among other things "interest in or under a profit-sharing or participation agreement or scheme."

The provisions above set forth remove this contract from the category of a strict service contract.

October 26, 1935.

SECURITIES ACT—CHAPTER 14899, ACTS OF 1931 AS AMENDED BY
CHAPTER 17253, ACTS OF 1935—"INVESTMENT CONTRACT"
—"INTEREST IN OR UNDER A PROFIT-SHARING OR
PARTICIPATION AGREEMENT OR SCHEME"

Dear Sir:

This acknowledges receipt of your inquiry concerning communication of October 21, 1935, addressed to you with reference to whether or not a certain so-called contract of employment proposed to be issued by Florida Frog Farms Corporation constitutes a security within the definition of Section 1 of Chapter 14899, Acts of 1931, as amended by Section 1 of Chapter 17253, Acts of 1935. This section defines a security as including, among other things, an "investment contract" and also an "interest in or under a profit-sharing or participation agreement or scheme."

The said employment contract is entered into between the purchaser of a pair of breeder frogs as the employer and the seller of such frogs as the employee; the terms of the sale being set forth, and in addition there-to the employee agrees to pay the employer as annual compensation, 37½ per cent of the offspring or proceeds thereof which may come from the breeders, which breeders are to be kept by the employee, or 37½ per cent of the increase if disposed of otherwise than by sale. In return the employee, after deducting the cost of feeding, care, butchering and marketing, turns over the balance to the employer.

The employee agrees to secure the frogs purchased, care for the same and market the offspring until July 1, 1945. It is further agreed that the employer may be employed by other owners to render similar service, and while the frogs are marked or numbered so as to distinguish them from the property of the others, the said frogs and their increase may be mixed and commingled with those belonging to the employee or other employers. It is further provided that the contract of employment should not be considered as a security or profit-sharing agreement of any description, but merely as a contract for services only.

The employer has the right to discharge the employee and demand an accounting and remove his particular frogs or a like number or accept their equivalent in cash at the then prevailing price.

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Of course the statement in the contract that it is not to be construed as a security or a profit-sharing agreement, can have no effect if the substance of the contract is otherwise. See *State vs. Gopher Tire & Rubber Co.*, 146 Minn. 52, 177 N. W. 937.

After a thorough study and consideration of this matter, I am of the opinion that the proposed employment contract is a security within the definition of Section 1 of said Act, and is both investment contract as well as the selling of an interest in or under a profit-sharing or participation agreement or scheme.

As held in *State vs. Gopher Tire & Rubber Co.*, supra, "the placing of capital or laying out of money in a way intended to secure income or profit from its employment is 'investment' as that word is commonly used and understood."

See also *State vs. Evans*, 154 Minn. 95, 191 N. W. 425; 27 A. L. R. 1165. *Webster vs. U. S. I. Realty Co.*, 170 Minn. 360, 212 N. W. 806. *Prchaska vs. Hammer-Miller Development Co.*, 256 Ill. App. 331.

Not only is this an investment contract, but it is also a sale or an interest in or under a profit-sharing or participation agreement or scheme. An almost identical case, with the exception that it applies to muskrats instead of frogs, is found in *State vs. Robbins*, 185 Minn. 202, 240 N. W. 456.

An examination of the case of *McCormick vs. Shively*, 267 Ill. App. 99, discloses that it is not in point because there was no provision made for the payment of money at a future time to the purchaser or holder of the contract of sale.

There can be no question that the holders of these so-called employment contracts are not interested in going into the business of raising frogs, but rather they are interested solely in the profits to be derived from the investment of their money in the original purchase and contemplate that such profit shall be greater because of the large scale management bestowed by the seller on behalf of numerous purchasers. Nor is there any question that the object of the so-called employee is to procure the capital with which to make the original outlay and thereafter allow the so-called employers to share in the profits. I think we must look at the substance and not the form.

August 26, 1935.

SECURITIES—FOREIGN CORPORATION QUALIFYING

Dear Sir:

I have given thought to the contents of the attached letter of Gilliland & Gilliland, Attorneys at Law, of Memphis, Tennessee, under date of

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August 20, 1935, with reference to the Ethical Products Company, in which the writer's contention is that the corporation should not be required to qualify before doing business in the State because it contemplates carrying on no intrastate business but the carrying on only of interstate commerce, by soliciting orders for its goods to be transmitted to the City of Memphis for acceptance. It is contended that the company expects to sell only the company's stock and that it will deal in no other securities in the State of Florida.

A dealer is defined in Section 1, Paragraph (4), Chapter 14899, Laws of Florida, 1931, as one selling any securities issued by another or otherwise acquiring such securities from another for the purpose of reselling them or offering them for sale to the public. By Section 11, Chapter 17253, Laws of Florida, 1935, amending the Acts of 1931, the added definition of a dealer in securities is given as

"Any issuer of a security required to be registered under the provisions of this Act selling such security, except in exempt transactions as defined in Section 5 hereof, shall be deemed a dealer within the meaning of this Section 11 and required to comply with all of the provisions hereof."

It is my opinion that where a foreign corporation has qualified under the provisions of law with reference to the registration and sale of its securities, including the issue of its own capital stock, in this State, it is not further required to qualify to do business in the State in order to sell such stock through a broker or dealer licensed to sell securities in the State of Florida.

The foreign corporation's salesmen would not be exempt from the provisions of the Act by reason of the fact that the corporation had registered its securities to be sold.

If the Ethical Products Company, a foreign corporation, desires to offer and sell its own stock direct to purchasers in the State of Florida through its salesmen, it would be required to qualify to do business in this State, but if the sale of such stock is made in the State of Florida through a duly licensed broker and dealer under the provisions of the Act hereinabove referred to, the company would not be required to further qualify to do business in the State of Florida unless it carried on some other intrastate business.

July 23, 1935.

CHAPTER 17253, ACTS OF 1935, AMENDING CHAPTER 14899, ACTS
OF 1931—REGISTRATION OF OIL, GAS OR
MINERAL CONTRACT AND DEED

Dear Sir:

This acknowledges your communication of July 20th, attaching file of your correspondence in connection with the question of whether or

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not the contract and deed used by All Florida Land Company requires registration under the above mentioned statutes.

The deed enclosed is in the form of a usual deed of conveyance, which conveys to the purchaser an undivided interest in and to an undivided one-half interest in certain described property, together with a like undivided interest in all the oil, gas and other minerals therein and thereunder.

The deed further recites that the grantee shall own such undivided interest "in the above described land and in all oil, gas and other minerals in and under said lands, together with a like undivided interest in all bonuses, royalties and rentals received as provided for in present or future contracts and/or oil, gas and mineral leases covering the above described lands, this deed being subject to such contracts and/or leases executed by the party of the first part."

It is my opinion that such deed and contract constitutes a security within Section 1 of the said Act of 1935, inasmuch as it is definitely a right to participate in or a certificate of interest in an oil, gas, petroleum, mineral or mining title or lease; or it constitutes an interest in or under a profit sharing or participation agreement or scheme.

Nor is the transaction involved in offering to enter into such contracts or deliver such deeds to the public generally an exempt transaction under Section 5 of the said Act of 1935 primarily because the "issuer" is the vendor.

It is, therefore, my opinion that these securities should be registered with the Securities Commission under the provisions of the above mentioned statutes.

February 26, 1936.

SUSPENSE ACCOUNTS UNDER SECTION 2, CHAPTER 14,653, ACTS
OF 1931—AUTHORITY TO ACCEPT REDUCED RATE OF
INTEREST UPON BONDS HELD AS SECURITY
FOR PUBLIC DEPOSITS

Dear Sir:

You have handed me certain papers, which are returned herewith. These papers indicate that there is now held in a Suspense account, under the provisions of Section 2, Chapter 14,653, Acts of 1931, \$3,000.00 of City of St. Augustine 5% General bonds, Series C, numbers 316, 317 and 318, dated January 1, 1925, and due January 1, 1955. These bonds were originally deposited with you as security for public moneys deposited in the now defunct Commercial Bank of St. Augustine, Florida.

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The papers submitted by you further indicate that refunding program, covering the issues of City of St. Augustine bonds, is now in progress; that said refunding program does not contemplate any exchange of bonds for the issue of January 1, 1925, above referred to; but does provide for a reduction of interest to 4% per annum an agreement to be attached to the original bond, showing this reduction. These papers further indicate that you have been advised that the refunding agents for the City of St. Augustine are not authorized to pay interest on the \$3,000.00 of bonds above referred to, except in accordance with the terms of the refunding agreement.

You wish to be advised as to whether or not, as to such bonds, you have any authority, under the law, to accept a reduced rate of interest.

I have to advise that, in my opinion, you have not the authority to accept a reduced rate of interest upon bonds so held by the Governor, Comptroller, and Treasurer, acting under the provisions of Sections 175 and 176, Compiled General Laws, 1934 Supplement. The provisions of the law authorizing such State officers to accept collateral securities theretofore deposited in settlement of accounts, does not give the State officials authority to enforce such securities by accepting payment of less than the contract rate of interest.

July 3, 1935.

SECURITIES—MUNICIPAL—AMOUNT

Dear Sir:

I have your letter of the 25th ultimo, referring to Section 9 of Senate Bill No. 249, Chapter 17253, Laws of Florida, Acts of 1935, amending Section 3 of Chapter 16,174, Acts of 1933. You quote the following:

"Or upon his making a Deposit of securities in like amount and of the character described in the preceding section."

You now inquire if this Section when read in connection with Section 2 of Chapter 16174 may be construed to mean that a deposit of securities consisting of municipal bonds are to be accepted at face value or at market value. I quote the first part of said Section 2 of Chapter 16,174, reading as follows:

"In lieu of said bond the applicant may, if he so desires, deposit with the Florida Securities Commission, United States government bonds of the value of Five Thousand Dollars (\$5,000.00) or cash in the sum of Five Thousand Dollars (\$5,000.00) or other securities satisfactory to the Commission."

From the above quotation it will be noted that the only bonds which may be accepted are United States government bonds or other securities

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satisfactory to the Commission. I think that the word "satisfactory" may properly be interpreted to relate not only to the class of bonds, but also to the value of the bonds and that the Board, if it should decide to accept municipal bonds, may require a sufficient number of such bonds according to their market value to cover the total amount of security required.

April 8, 1935.

CLERK CIRCUIT COURT BROWARD COUNTY, SALE BY STATE
TREASURER OF COLLATERAL

Dear Sir:

In your letter of the 6th instant, you state that you hold a mortgage under the provisions of Chapter 13789, Acts of 1929, on four lots in Broward County, securing an indebtedness of \$14,500, against which said lots there are tax certificates representing some \$400 of delinquent taxes, and that the estimated present sale value of said lots is about \$300 each. It is stated that the holder of the tax certificates would be inclined to buy the mortgage as to two of the lots.

Chapter 13789, Acts of 1929, relieved the Clerk of the Circuit Court of Broward County from any and all liability for loss sustained by reason of the insolvency of the Fort Lauderdale Bank and Trust Company of funds deposited by said Clerk, and required him to surrender and deliver to the State Treasurer any and all collateral held by him individually and as Clerk of the Circuit Court given by said bank.

There is no express provision as to the disposition to be made of said collateral, but it is my opinion that the Act contemplates and is to be construed as vesting in you the discretion of disposing of or liquidating the said collateral in such manner as in your judgment will cause the same to realize the best returns for the account or accounts for which said collateral was held. It is my opinion, therefore, that you are authorized and probably required to dispose of said collateral in the manner indicated.

January 8, 1935.

SECURITIES, SALE

Dear Sir:

The first phase of the question propounded in your letter of December 31, 1934, was answered by my letter to you dated December 31, 1934, in answer to yours of December 21, 1934.

As to the second phase of your question, it is my opinion that the Governor, Comptroller, and Treasurer, may sell such part of the securi-

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ties taken in case of settlement with the bank in liquidation, as the Receiver's account bears to the total amount of said securities in order to pay off the Receiver's account. But I do not think they would be authorized to sell any of the securities taken in such settlement, which represent securities held to cover State funds.

April 5, 1935.

SECURITIES, ALL FLORIDA LAND COMPANY

Dear Sir:

At your request I have examined the form of lease and form of conveyance of an undivided interest contained in the prospectus of All Florida Land Company, which is attached to your letter of the 4th instant.

It is my opinion that the former does not come within the scope of the provisions of the Florida Securities Act, but that the latter, to-wit: the form of Conveyance of an undivided interest in and to all the rights, title, and interest of All Florida Land Company, does come within the terms of Chapter 14899, Laws of Florida, Acts of 1931, as being a "certificate of interest in oil, gas, and mining lease". It is to be observed that the form of deed conveys only an interest in and to the right, title and interest of the All Florida Land Company, which interest of the All Florida Land Company is based on a lease to it.

In the second paragraph of the proposed Indenture, it clearly appears that the interest conveyed is an interest in a lease held by the Company, covering the described land by reason of the expression, "it is understood and agreed that the Grantee shall own such undivided interest in all oil, gas, and other minerals in and under said lands, together with a like undivided interest in all bonuses, royalties, and rentals received as provided for in present and future oil, gas and mineral leases or contracts covering the above described lands, this deed being subject to such leases and/or contracts executed by the party of the first part."

It is an elementary principle of law that the Grantor can convey no greater interest than he has. And since his interest is that evidenced by a lease, the effect of the proposed conveyance is to convey an interest in an oil, gas or mining lease, and the proposed Indenture is in contemplation of the Securities Act a "certificate of interest in an oil, gas, or mining lease."

I return the prospectus and opinion attached to your said letter.

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June 22, 1935.

SECURITIES COMMISSION—TRAVELING EXPENSE ACCOUNT

Dear Sir:

II have your letter of the 18th instant, stating that you have a traveling expense account against the Florida Securities Commission which exceeds the sum appropriated in the 1933 General Appropriation Act, and making inquiry if the same may be taken care of under Senate Bill No. 249, Chapter 17253 approved June 4, 1935.

In reply I beg to say in my opinion the same may be taken care of under the provisions of Section 3 of Senate Bill No. 249, which provides that all fees and charges collected by the Commission shall be paid into the State Treasury and credited to the Securities Commission and that same is appropriated to the use of the Commission toward the expenses of enforcing the Act.

January 22, 1935.

SECURITIES, EXEMPTIONS

Dear Sir:

Answering your letter of the 31st ultimo, with reference to securities, I refer you to Chapter 14,899, Laws of Florida, Acts of 1931, and Chapter 16,174, Laws of Florida, Acts of 1933, copies of which were prepared in the office of the State Treasurer and are being sent to you, under separate cover, as per your request.

In answer to your inquiry relative to exemptions of religious and fraternal organizations, under said statutes, I refer you to paragraph (e) of Section 4 of Chapter 14,899, Acts of 1931, showing certain exemptions, reading as follows:

"Any security issued by a corporation organized exclusively for religious, educational, benevolent, fraternal, charitable or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any private stockholder or individual."

SURETIES

February 13, 1935.

UNIFORM SALES SECURITIES ACT—CHAPTER 14899, LAWS OF
FLORIDA, ACTS OF 1931—REGISTRATION OF STOCK AND
SALESMEN IN MULTI-OWNERSHIP PLAN*Dear Sir:*

This acknowledges yours of the 11th instant, regarding the above matter, with reference to Covington Arms Residences, Inc. The plan which you outline is briefly as follows:

A profit corporation acquires fee simple title to an apartment house building; through an agency it negotiates ninety-nine year leases to the various apartments, allocating to the lessees a proportionate part of the stock in the corporation. The stock is non-assessable no par value floating shares. Thus the lessee obtains possession of the apartment, and his leasehold estate, and as a stockholder shares in the management and control of the corporation and its property. The stock cannot be sold or assigned except along with the lease. The corporation maintains a lien upon the stock to secure payment of all indebtedness due it from the stockholder-lessee.

You ask whether or not the stock must be registered, and whether or not the agency negotiating the leases and sale of this stock must also be registered under the above mentioned Act.

It is my opinion that the stock involved must be registered with the Florida Securities Commission and the salesmen must also be registered.

I can find no distinction between the sale of this stock and the sale of any other security, within the terms of the Act, which would in any manner take it out of the operation of the broad definitions of "security" and "sale" as given in this Act.

October 9, 1936.

INSURANCE—CONSTRUCTION OF WORDS "HAZARDOUS
OCCUPATION" IN SECTION 6443, COMPILED
GENERAL LAWS, 1927*Dear Sir:*

This is in reply to your letter of September 25, with enclosed correspondence dealing with Chirotonsors Mutual Protective Association. You request my opinion as to whether or not barbers and beauticians are members of a single hazardous occupation, within the provisions of Section 6443, Compiled General Laws of Florida, 1927.

SURETIES

It is unnecessary to determine whether or not barbers and beauticians come within one single classification or are separate occupations, inasmuch as it is my opinion that the occupation of neither barbers nor beauticians comes within the definition of "hazardous" under said statute. Webster's Unabridged Dictionary defines the word "hazardous" as follows:

"Dangerous; that exposes to peril or danger of loss or evil; as a hazardous attempt or experiment".

From the enumeration of some of the hazardous occupations named in Section 7058, Compiled General Laws of Florida, it is possible to obtain some idea of what the Legislature has considered to be hazardous occupations. The occupations so listed are railroading, operating street railways, generating and selling electricity, telephone and telegraph business, express business, blasting and dynamiting, operating automobiles for public use and boating when boat is propelled by steam, gas or electricity.

It has been urged that insurance companies regard the occupation of beauticians and barbers as hazardous.

I have consulted a standard rating book used by insurance companies and find that there are approximately eleven classifications of occupations according to the degree of danger involved. I find that the vast majority of occupations listed fall into classifications other than the first in point of desirability as risks. I find that beauticians and barbers are in the fourth highest classification, with approximately seven other classifications rated more hazardous.

It is therefore my opinion that Chirotonsors Mutual Protective Association is not exempt from the provisions of the statutes regulating fraternal benefit societies under Section 6443, Compiled General Laws of Florida, 1927, by reason of the fact that said association limits its membership to beauticians and barbers.

November 28, 1936.

**SICK AND FUNERAL BENEFIT INSURANCE—LIMITATIONS ON
NATURE OF POLICIES TO BE ISSUED**

Dear Sir:

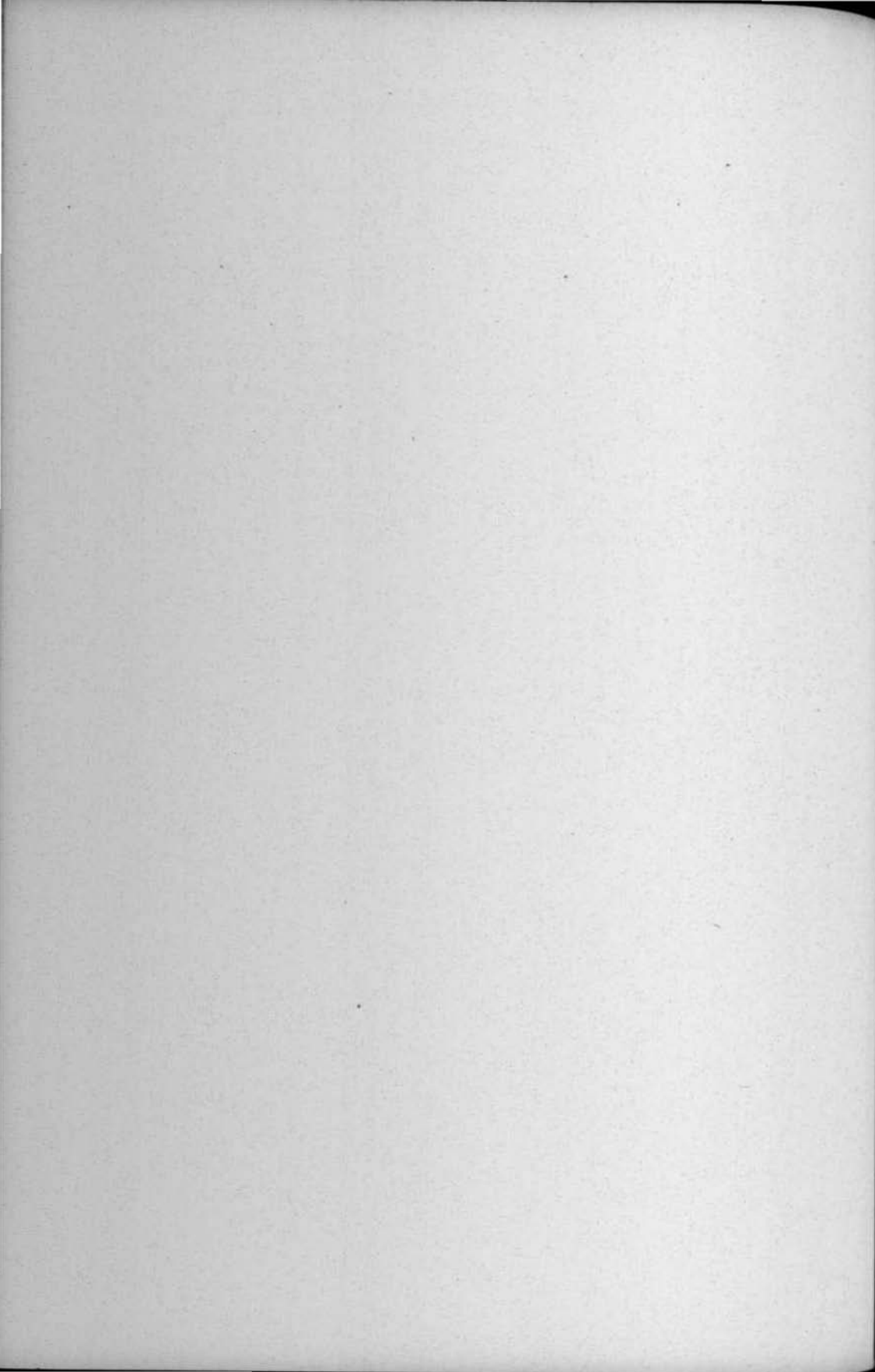
This is in reply to your inquiry of November 16, in which you request my opinion as to whether or not sick and funeral benefit companies operating under Sections 6260, etc., Compiled General Laws of Florida, 1927, may be authorized by the Insurance Department to issue policies insuring the holders in a sum equal to the amount payable at death (or any other specific amount) for accidental injuries set out

SURETIES

in such policies. It is my opinion that such companies are not permitted by law to issue policies containing the provisions referred to by you.

Policies of sick and funeral benefit insurance must not exceed the limits defined in Section 6260, Compiled General Laws of Florida, 1927, which section reads in part as follows:

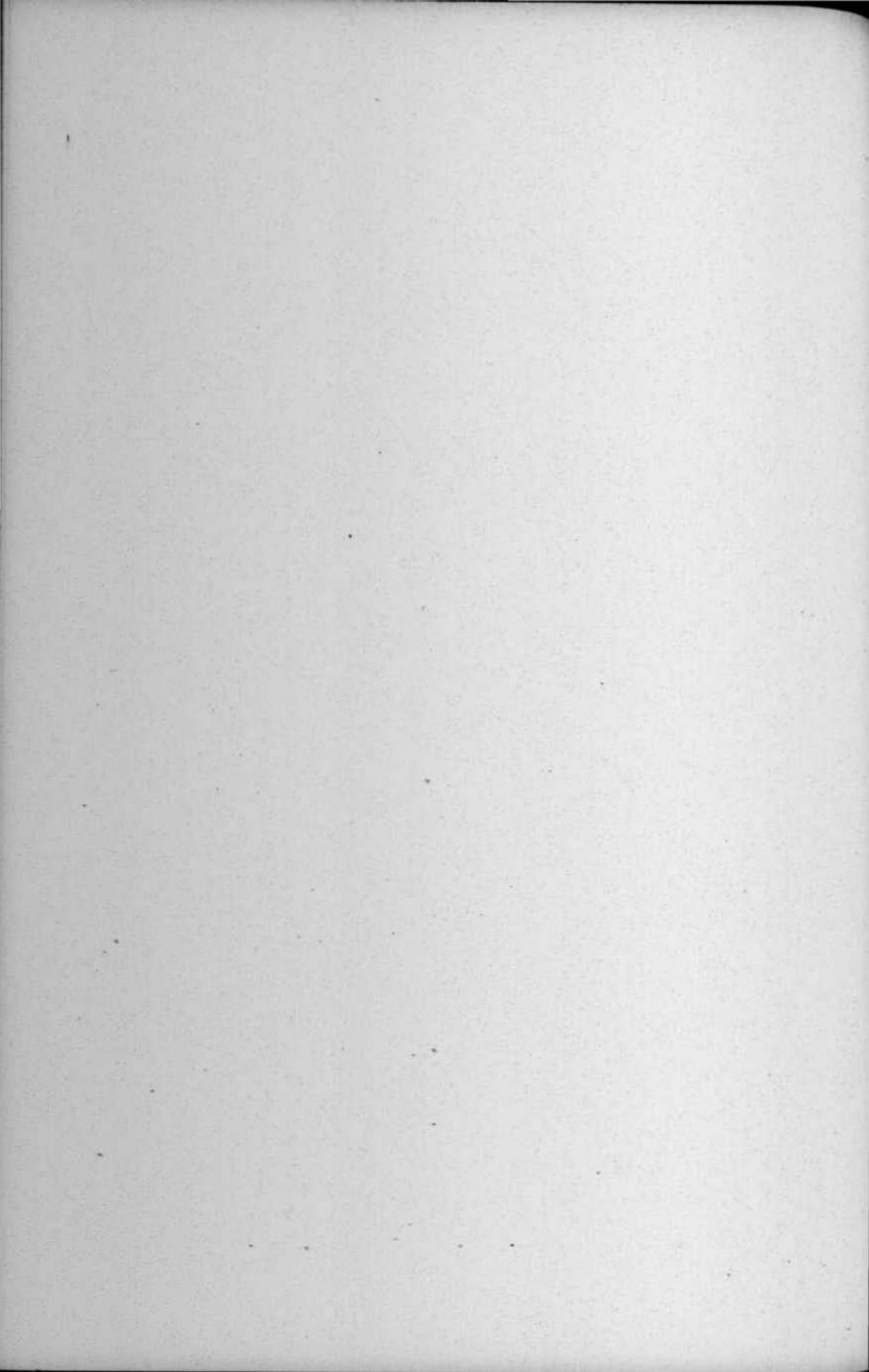
"Sick and funeral benefit insurance is hereby defined as any policy, contract or agreement whereby a company, corporation or association stipulates to provide for the insured either medical attendance, medicine, care during "disability caused by sickness or injury, expenses of funeral in case of death, or the money necessary for any or all of the aforesaid purposes in lieu of such services. All policies, contracts and agreements to be hereafter made or entered into, for sick and funeral benefit insurance as herein defined, shall not be written, made or entered into except as provided herein".



CHAPTER XI

CONSERVATION AND FRESH WATER FISH AND GAME DEPARTMENTS

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CONSERVATION AND FRESH WATER FISH AND GAME DEPARTMENTS

SECTION 1

HUNTING

November 2, 1935.

GAME AND FRESH WATER FISH—CITRUS COUNTY

Dear Sir:

I am in receipt of your letter of the 31st ultimo with reference to hunting in Citrus County.

In reply I beg to say I do not find any Act of the 1935 Legislature relating only to Citrus County except Chapter 17,512 and I wish to say I agree with your interpretation of the same to the effect that said Act applies only to the period from December 1st to February 1st and does not affect the hunting periods in said County from November 20th to November 30th or from February 2nd to February 15th.

October 23, 1935.

REFUND OF HUNTING LICENSE MONIES

Dear Sir:

I am in receipt of your letter of the 22nd instant advising that hunting licenses were sold in the County of Dade during the month of September in contemplation by hunters of being able to shoot doves during September and October under the Federal regulations; that these regulations were later changed and that the licensees will not be permitted to hunt doves or other game until the regular open hunting season begins on November 20th. You also state that it has been represented to you that many of the purchasers of these licenses purchased same with the sole purpose of hunting doves and that they do not ordinarily hunt other game. You make inquiry as to whether or not under these circumstances the County Judge's report of licenses for September, together with his check to cover same, may be returned and the several licensees be refunded the amount paid for licenses during September.

In reply to your inquiry I beg to say I have carefully examined the game laws and I do not find any authority for the Commission to return said report or the amount of the check covering same, nor do I find any authority for refunds to purchasers of such licenses.

HUNTING

September 17, 1936.

KILLING IN AREAS INFESTED WITH CATTLE FEVER TICK

Dear Sir:

I am in receipt of your letter of the 16th instant, the body of which reads as follows:

"The deer in certain areas in the southern part of this State are infested with cattle fever tick. Has the Commission of Game and Fresh Water Fish authority, in areas infested with cattle fever tick, to take and kill deer, with a view to eradicating the cattle fever tick and rendering such areas tick free?"

In reply your attention is called to the first part of Section 1977 (5), Compiled General Laws of Florida, 1934 Supplement, reading as follows:

"The State game commissioner, his deputies, or any person authorized by him, shall have authority to take fresh-water fish, game, fur-bearing animals and non-game birds at any time of the year by netting or trapping or other methods for the purposes of *propagation and re-stocking and for scientific purposes and shall have authority to remove enemies of game, fresh-water fish, non-game birds and fur-bearing animals by trapping, netting, shooting, gigging, poisoning or other methods.* * * * "

Deer infested with cattle fever tick would appear to be enemies of deer not so infested and in view of the above quoted authority to remove enemies of game, your inquiry, in my opinion, should be answered in the affirmative.

June 8, 1936.

CHAPTER 16,043 OF 1933—OPEN SEASON ON DEER—ARREST OF
CITIZENS FROM OUT OF COUNTY

Dear Sir:

I am in receipt of your letter of the 5th instant referring to Chapter 16,043, Laws of Florida, Acts of 1933, making it lawful for citizens of a County of a designated population to take buck deer on certain days of the week between June 15th and August 15th. You make inquiry if parties from outside of said County would be subject to arrest for taking deer in said County during said open season.

In reply I beg to say that there is some question as to the validity of this statute. See *Harper vs. Galloway*, 85 Fla. 255, 51 So. 226. However, under the ruling of our Supreme Court an administrative officer

HUNTING

is not authorized to declare an Act invalid but is presumed to enforce the Act as written until declared invalid by a competent Court. In this situation and under the general game law prescribing a different open season for the taking of deer, it would appear to be within your duty to make arrest of parties outside of the County taking game in said County during said open season and such parties would then have access to the Courts for judicial determination as to whether said Act is valid.

April 22, 1936.

GAME AND FISH DEPARTMENT—CONSTRUCTION OF STATUTES—
DEER

Dear Sir:

I am in receipt of your letter of the 17th instant, the body of which reads as follows:

"Your attention is called to Chapter 16843, Laws of Florida, Acts of 1933.

It has been suggested that the above Act is unconstitutional, and inquiry has been made as to whether this Department is authorized to treat the same as invalid."

In reply I beg to refer you to the decision of our Supreme Court in the case of State ex rel. Atlantic Coast Line Railroad Company vs. State Board of Equalizers, 84 Fla. 592, 94 So. 681, and I quote you the first four headnotes of same, reading as follows:

1. "Every law found on the statute books is presumptively constitutional, until declared otherwise by the court, and an officer of the executive department of the government has no right or power to declare an act of the Legislature to be unconstitutional, or to raise the question of its constitutionality without showing that he will be injured in person, property, or rights by its enforcement."

2. "Officers must obey a law found upon the statute books until in a proper proceeding its constitutionality is judicially passed upon."

3. "Every act of the Legislature is presumptively constitutional until judicially declared otherwise, and the oath of office 'to obey the Constitution,' means to obey the Constitution, not as the officer decides, but as judicially determined."

4. "The right to declare an act unconstitutional is purely a judicial power, and cannot be exercised by the officers of the executive department under the guise of the observance of their oath of office to support the Constitution."

HUNTING

I also refer you to the case of *White vs. Crandon*, 116 Fla. 162, 156 So. 303, which holds to the same effect.

In view of the above I do not think that your Department would be authorized to treat the above mentioned, or any other, statute as invalid until the same may be declared invalid by the Courts.

October 29, 1935.

GAME REFUGE

Dear Sir:

I have your letter without date making inquiry as to the administration of Chapter 17,131, Laws of Florida, Acts of 1935, with reference to the game refuge created thereby within the boundaries of the Everglades National Park.

The said Act recites that it is to be enforced by the State Board of Conservation. Your attention, however, is called to Chapter 17,016, Acts of 1935, which provides that the duties and powers heretofore vested in the State Game Commissioner or the State Board of Conservation, so far as the same relate to game, non-game birds, fresh-water fish and fur-bearing animals, shall be vested in the Game and Fresh-Water Fish Commission. It, therefore, appears that the administration of Chapter 17,131, Acts of 1935, is with the Game and Fresh-Water Fish Commission.

It is my understanding that Mr. ———, Game and Fish Conservation Officer for the 4th Congressional district, has an office in the City Hall at Miami should you wish to take up the matter with him.

June 10, 1935.

**FRESH WATER FISH AND GAME COMMISSION—CHAPTER 17016
OF 1935—SEPARATION FROM CONSERVATION DEPARTMENT**

Dear Sir:

In your letter of the 5th instant you refer to House Bill No. 912, and request my opinion as to what bearing its enactment has on Chapter 16178, Acts of 1933, which created the State Board of Conservation.

It unmistakeably appears to have been the intention of the Legislature to create a Commission of Game and Fresh Water Fish, whose powers, duties, and functions should be separate and apart from and independent of those of the State Board of Conservation, as evidenced by the following provision found therein:

HUNTING

"All duties, powers, and responsibilities heretofore vested by law in the State Game Commissioner, or the State Board of Conservation, so far as the same relates to game, non-game birds, fresh water fish, and fur-bearing animals within the State of Florida shall be vested in and conferred upon the Commission of Game and Fresh Water Fish, hereby created."

It is further provided in House Bill No. 912:

"The funds resulting from the administration of this Act shall constitute the State Game Fund and shall be used in carrying out the provisions thereof and for no other purpose."

It appears, therefore, to be the legislative intent of House Bill No. 912 that the Commission of Game and Fresh Water Fish thereby created shall act independently of the State Board of Conservation, and will in no way be responsible thereto. This, if the Act is upheld, will have the effect of separating the game and fresh water fish from the supervision and control of the State Board of Conservation, together with the State Game Fund, and from the effective date of House Bill No. 912, the jurisdiction of the State Board of Conservation will be confined to the Departments of Shell Fish and Geological Survey.

June 24, 1935.

FISH AND GAME DEPARTMENT—DEER

Dear Sir:

I have your letter of this date calling attention to House Bill No. 813, Chapter 16968 of the 1935 Legislature providing an open season for hunting and killing buck deer from the 20th day of June to July 31st in counties having a population of not less than 6,418 and not more than 6,500 according to the last Federal Census, which Act applies only to Dixie County. You ask if it would not be permissible for any resident of the State of Florida, who has a State Hunting License, to hunt buck deer in Dixie County during this special open season since the game is supposed to belong to the State.

In reply I beg to say in my opinion residents of the State of Florida residing in counties other than Dixie County would not be authorized, under said House Bill No. 813, to hunt and kill buck deer in Dixie County during this special open season.

HUNTING

October 12, 1936.

GAME AND FRESH WATER FISH COMMISSION—FAIRS AND
EXPOSITIONS—DIORAMAS*Dear Sir:*

I am in receipt of your letter of the 9th instant quoting from the letter addressed to your Commission from Hon. ———, Manager, Florida National Exhibits, Great Lakes Exposition, Cleveland, Ohio, in which you quote him as follows:

" * * * we find an enormous amount of interest manifest in black bass fishing and it is our desire to put our shops and studios to work in producing a large diorama of a black bass fishing scene in Florida * * *".

"We are seriously handicapped for funds and if your body can see fit to assist us in financing this it will be greatly appreciated."

You make inquiry if the Commission of Game and Fresh Water Fish has authority to appropriate funds for said purpose.

In reply I beg to refer you to Section 1977 (8), Compiled General Laws of Florida, Permanent Supplement of 1936, which was originally Section 8 of Chapter 13,644, Laws of Florida, Acts of 1929. Under said Section the Game and Fresh Water Fish Commission has the authority, with the approval of the Governor, to print and publish bulletins and other publications and *use other means of disseminating information concerning game, non-game birds, fresh water fish and fur bearing animals.*

The above statute probably relates to the dissemination of information within the State but it is very doubtful if the statute contemplates such dissemination of information beyond the borders of the State or within the bounds of the United States or foreign countries.

I am, therefore, of the opinion that the Game and Fresh Water Fish Commission, with the approval of the Governor, would be authorized to expend funds of the Commission in producing a diorama of black bass fishing in Florida for the purpose of use within the State in connection with fairs or expositions within the State but not primarily for use beyond the State. However, if such a diorama should be produced for use within the State I see no objections to the same being loaned for use beyond the State at such times as the same may not be needed for use in Florida provided the Game and Fresh Water Fish Commission is put to no expense in connection with such loan.

SECTION 2

SALT WATER FISHING

August 25, 1936.

LAWS—PASSAGE—HOUSE BILL NO. 102, CHAPTER 17593 SPECIAL
ACTS—1935 SESSION—EXPIRATION DATE*Dear Sir:*

I have your letter of August 11, 1936, together with enclosure of letter under date of August 7, 1936, from Honorable _____. I note that Senator _____ asserts that, through typographical error, House Bill No. 102 above referred to, as finally enacted, provided for the expiration of said Act on September 1, 1936, instead of on September 1, 1937.

You request that I advise you as to the expiration date of the Bill in question.

I have carefully examined the House and Senate Journals, relative to the passage of this Bill, and find there nothing to show that there was any error in the engrossing of the Bill in question. Under these circumstances, I am of opinion that, though it may unfortunately, not coincide with the intention of the introducer of the Bill, we must be governed by the provisions of the law as it was enacted. In other words, we can only judge the intention of the Legislature from the Act in question, and reference to the legislative journals, does not show any contrary intention.

April 30, 1936.

SALT WATER FISH DEALER'S LICENSE

Dear Sir:

Answering your letter of the 25th inst., relative to salt water fish dealer's license, I refer you to the latter part of Section 1827, Compiled General Laws of Florida, 1927, defining dealers, and reading as follows:

" * * * A wholesale fish dealer shall be considered any one who sells fish to a retail dealer other than the person who catches the fish, and a retail dealer shall be considered any one who sells fish directly to the consumer: Provided, however, that any one holding a merchandise license may sell salt cured fish without payment of such retail dealer's license."

You will note that a wholesale salt water fish dealer is one who sells to a *retail dealer*.

As to the amount of license for dealers see Chapter 17,011, Laws of Florida, Acts of 1935.

SALT WATER FISHING

December 10, 1935.

SALT WATER FISH—MULLET IN CLOSED SEASON—SEARCH AND SEIZURE OF TRUCKS

Dear Sir:

I have your letter of the 10th instant, reading as follows:

"Please advise whether my Conservation Agents have authority to search trucks transporting mullet during the closed season on mullet and seize mullet on trucks."

In reply your attention is called to Section 1861, Compiled General Laws of Florida, 1927, originally Section 2 of Chapter 10,123, Acts of 1925, reading as follows:

"It shall be unlawful for any person, persons, firm or corporation to take, have in his or their possession, buy, sell, offer for sale or ship any fresh or freshly salted mullet or mullet roe, in this State between the first day of December of any year and the twentieth day of January of the next succeeding year. The possession of any fresh or freshly salted mullet, or any fresh or freshly-salted mullet roe, by any person, persons, firm or corporation, during the closed season shall be prima facie evidence of the violation of this law; Provided, however, that anyone having any fresh or unsplit mullet, or roe on hand at the beginning of the closed season may have five days in which to dispose of same."

Your attention is also called to Section 1341, Compiled General Laws of Florida, 1927, formerly Section 1273, Revised General Statutes of Florida, 1920, reading as follows:

"The shell fish commissioner, or his duly authorized deputies, shall enforce the provisions of this Article, and for this purpose they are constituted State police officers, with full police powers to arrest without warrant any one violating any of the provisions of this Article. The said shell fish commissioner, or his deputies, shall have authority, without warrant, to board and search any vessel or boat, or enter any fish house, warehouse or other building in which the fish or nets are kept, which they may have cause to believe that fish taken out of season are stored, or that contains illegal nets."

Your attention is further called to Section 8326, Compiled General Laws of Florida, 1927, originally Section 1 of Chapter 11,385, Acts of 1925, Extra Session, reading as follows:

"When any sheriff, deputy sheriff, or other police officer in this State shall lawfully arrest any person, it shall be lawful

SALT WATER FISHING

for the officer making such arrest, or his assistants, to search the person of such person so arrested, and if such search reveals the violation of any law, such officer shall hold such person upon a charge of violating the law, the violation of which has been so revealed, and anything found upon such person or in his or her possession which intends to show the guilt of such person of the violation of law shall be admitted in evidence upon a trial in which such violation is charged, and such violation shall be deemed and held to be one committed in the presence of the officer."

Your attention is also called to Section 8323, Compiled General Laws of Florida, 1927, formerly Section 6029, Revised General Statutes of Florida, 1920, reading as follows:

"It shall be lawful for any sheriff, deputy sheriff, constable, city marshal, police officer or other executive officer in this state to arrest and take into custody, without a warrant, any person who, in the presence of such officer, violates any of the penal laws of this State, or of any municipality, and it shall be the duty of such officer to arrest without warrant and take into custody any person whom such officer has reasonable ground to believe, and does believe, has committed any felony, or whom he finds in the act of committing any felony or about to commit any felony, or engage in a fight or other breach of the peace."

Under the provisions of the above quoted statutes and under the rulings of our Supreme Court it appears that your Conservation Agents would not be authorized to search trucks transporting mullet during the closed season on such mullet and seize such mullet on said trucks unless the driver of such truck is lawfully arrested under a warrant for his arrest and for the search and seizure, or is lawfully arrested without warrant under the provisions of Section 8323, Compiled General Laws of Florida, 1927, above quoted, which requires the offense to be committed in the presence of the officer or that he shall have reasonable ground to believe and does believe the party has committed a felony. Such arrests and seizures would not be authorized unless the arresting officer has some definite information amounting to more than a suspicion that the law is being violated.

November 25, 1935.

**SALT WATER FISH—TAKING SILVER MULLET FOR BAIT DURING
CLOSED SEASON—ALIENS—LICENSES**

Dear Sir:

In reply to the first inquiry of your letter of the 21st instant, I beg to say that Section 1861, Compiled General Laws of Florida, 1927,

SALT WATER FISHING

originally Section 2 of Chapter 10,123, Laws of Florida, Acts of 1925, prohibits the taking of silver mullet during the closed season and applies to the taking of such fish either for bait purposes or for sale.

Answering your second inquiry I beg to say under the provisions of Section 1260 and 1261, Revised General Statutes of 1920, now Sections 1828 and 1829, Compiled General Laws of Florida, 1927, and Section 7 of Chapter 10,123, Acts of 1925, now Section 1866, Compiled General Laws of Florida, 1927, aliens fishing in the salt waters of this State should procure a regular boat license, an alien boat license and an alien fishing license. The question of whether aliens fishing in the salt waters of this State should also take out a wholesale dealer's license will depend upon whether or not they are actually engaged in the business of a wholesale dealer.

November 23, 1935.

SALT WATER FISH—AUTHORITY OF MUNICIPALITIES TO
PROHIBIT SEINING IN CITY LIMITS

Dear Sir:

I have your letter of the 21st instant stating that numerous bayous and part of the Anclote River are within the City limits of Tarpon Springs. You make inquiry if the City of Tarpon Springs is authorized by ordinance to prohibit seining in these waters.

In reply your attention is called to Section 1826, Compiled General Laws of Florida, 1927, reading as follows:

"All fish in the rivers, bayous, lagoons, lakes, bays, sounds and inlets bordering on or connected with the Gulf of Mexico and the Atlantic ocean, or in the Gulf of Mexico or Atlantic ocean, within the jurisdiction of the State of Florida, are hereby declared and shall continue and remain the property of the State of Florida, and may be taken and used by citizens of this State and persons not citizens of this State, subject to the restrictions and reservations hereinafter imposed by this Article.

I know of no general law authorizing municipalities to pass and enforce an ordinance prohibiting the taking of fish by seines within the City limits and in view of the above quoted statute it is my opinion that municipalities may not pass and enforce such an ordinance unless specifically authorized by the Legislature. It might be well under Section 1846, Compiled General Laws of Florida, 1927, originally Section 1278, Revised General Statutes of 1920, for you to request the local State Attorney or Prosecuting Attorney to examine the municipal charter of Tarpon Springs and advise you whether or not any such authority has been granted to said City.

SALT WATER FISHING

November 19, 1935.

CONSERVATION DEPARTMENT—SALT WATER FISHING IN
BISCAYNE BAY—SEINES AND NETS*Dear Sir:*

I have your letter of the 13th instant requesting my construction of that part of Section 5817, Revised General Statutes of 1920, as amended by Chapter 14,720, Acts of 1931, now Section 8049, Compiled General Laws of Florida, 1934 Supplement, reading as follows:

"No seine, gill-net or other nets, except a common cast net, shall be set or used for the taking of food fish within one mile of any pass or inlet, or continuation thereof, from the Atlantic Ocean to any inland waters of this State, * * * * ."

Inquiry is specifically made as to whether said statute prohibits the use of seines and certain nets in the taking of food fish in Biscayne Bay more than a mile from a pass or inlet leading from the ocean into Biscayne Bay.

A construction of said statute with reference to the above inquiry requires an interpretation of the words "or continuation thereof" and the words "inland waters of this State."

The word "inland" is defined by Words and Phrases as follows: "Within a country, state or territory; within the same country."

In the case of *Cogswell vs. Chubb*, 36 N. Y. Supplement 1076, 1077, 1 App. Div. 93, as reported in Words and Phrases, it was held that:

"A policy of marine insurance, insuring the vessel to navigate only in inland waters of the United States means such waters as canals, lakes, rivers, water courses, inlets, bays, etc., and arms of the sea between projections of land, and will not include the open waters of the Atlantic."

The above quotation referred to inland waters of the United States while the above quoted statute refers to inland waters of this State. It must be kept in mind, however, that the boundaries of the State are coextensive with the boundaries of the United States in this territory and include the islands separating the Atlantic Ocean from Biscayne Bay. It would, therefore, appear that Biscayne Bay is one of the inland waters of the State.

In construing the words "in continuation thereof" the question may arise as to whether such language means a continuation of the pass or inlet to one or more of the rivers and canals emptying into Biscayne Bay from the mainland or refers to the deepening and extension of passes or inlets by dredging for the purposes of navigation. It is my

SALT WATER FISHING

understanding that there are two rivers and certain canals emptying into Biscayne Bay from the mainland and that there are several passes or inlets from the Atlantic Ocean to Biscayne Bay. If an imaginary line should be drawn from each of the passes or inlets across Biscayne Bay into one or all of the rivers or canals emptying into said Bay from the mainland, it would be seen that these various lines would doubtless cross in many places and would present a picture of Biscayne Bay difficult to keep in mind by fishermen in the Bay or by officers endeavoring to enforce the fishing laws in said Bay. It would, therefore, appear that the words "in continuation thereof" have reference to the continuation of passes or inlets by the process of dredging for navigation purposes.

In construing the above statute it may reasonably be inferred that the Legislature had in mind the generally well known fact that fishing is better near the mouth of streams and passes or inlets than it is in the open waters some distance therefrom.

In view of the above it is my opinion that the statute does not prohibit the use of seines or nets for the taking of food fish in Biscayne Bay more than a mile from the passes or inlets leading from the Atlantic Ocean to Biscayne Bay or the continuation of such passes or inlets extended by dredging or other means for navigation or other useful purposes.

November 5, 1935.

SALT WATER FISH DEALERS' LICENSES—EXEMPTION OF WAR VETERANS

Dear Sir:

I have your letter of the 25th ultimo referring to Chapter 17,476, Laws of Florida, Acts of 1935, amending Section 1 of Chapter 12,110, Acts of 1927, as amended by Chapter 1376, Acts of 1929, and further amended by Chapter 16,299, Acts of 1933. Said Section 1, as amended, provides that certain war veterans meeting certain requirements "be granted a license to engage in any business or occupation in the State of Florida which may be carried on *mainly* through the personal efforts of the licensee as a means of livelihood, and for which the State, County or municipal license does not exceed the sum of Fifty (\$50.00) Dollars without payment of any license tax otherwise provided for by law." Your inquiry relates to the meaning of the word "mainly", as applied to salt water fish dealers' licenses.

Webster's New International Dictionary defines the word "mainly" as follows: "Powerfully, forcibly, or violently; in a strong manner or to a great degree; hence, greatly or abundantly." "Principally, chiefly, in the main." "Very; exceedingly".

SALT WATER FISHING

It would, therefore, appear that the exemption would not apply to an applicant for wholesale or retail salt water fish dealer's license unless the business is to be carried on "mainly" or principally through the personal efforts of the licensee. If the applicant is to use helpers or employees to do as much as or more than the applicant in carrying on the business he would not be entitled to the exemption.

September 25, 1935.

WHOLESALE AND RETAIL SALT WATER FISH DEALERS

Dear Sir:

I have your letter of this date referring to House Bill No. 12, Chapter 17,009, Laws of Florida, Acts of 1935, and House Bill No. 503, Chapter 17,011, Laws of Florida, Acts of 1935, both of which Acts amend Section 7 of Chapter 10,123, Laws of Florida, Acts of 1925.

In reply I beg to say in my opinion House Bill No. 503 (Chapter 17,011) supersedes House Bill No. 12 (Chapter 17,009), and that House Bill No. 12 ceased to be effective upon the effective date of House Bill No. 503.

You make further inquiry with reference to the definition of a wholesale salt water fish dealer. In reply I refer you to the latter part of Section 1827, Compiled General Laws of Florida, 1927, defining wholesale and retail salt water fish dealers as follows:

"A wholesale fish dealer shall be considered any one who sells fish to a retail dealer other than the person who catches the fish, and a retail dealer shall be considered any one who sells fish directly to the consumer: Provided, however, that any one holding a merchandise license may sell salt cured fish without payment of such retail dealer's license."

August 20, 1935.

SALT WATER FISHING—SPECIAL ACTS CONSTRUED—
SARASOTA COUNTY

Dear Sir:

I have your inquiry date August 19, in which you ask if the provisions of Chapter 9602, Special Acts of 1923, repeal the provisions of Chapter 9599, Special Acts of 1923.

An examination of the House and Senate Journals discloses that the first mentioned chapter was passed May 21, 1923, and the latter on May 28, 1923. Both became laws without the approval of the Governor.

SALT WATER FISHING

Both relate to the same subject matter, that is, regulating fishing in the inside salt waters of Sarasota County. The act passed on May 21, 1923, applies to all the inside waters in Sarasota County and prohibits the use of nets of any size, length or depth except a common hand cast-net and gill-net. It provides that no gill-nets shall be fished within one hundred yards of the shore-line and that they shall not be dragged or hauled in any manner whatsoever except during the mullet season.

The act passed one week later has practically the same provisions with reference to inside waters of Sarasota County, but excepts the waters of Lemon Bay and its tributaries, and provides that no gill-net or nets shall be dragged or hauled in any manner or fished except in the ordinary and usual manner of gill-net fishing.

It is my opinion that the later act does not repeal the provisions contained in the act passed on May 21, at the same session of the Legislature, to the effect that gill-nets should not be fished within one hundred yards of the shore-line or dragged or hauled in any manner except during the mullet season.

The Supreme Court of Florida has held that laws should be construed with reference to the Constitution and purposes designed to be accomplished and with other laws on the same subject matter in *par materia*, although they contain no reference to each other. See *Curry vs. Lehman*, 53 Fla. 847, 47 So. 18; *Loftin vs. McMillan*, 55 Fla. 254, 45 So. 882. These cases were cited with approval and parts thereof quoted in *State vs. Johnson*, 71 Fla. 362, 72 So. 477, holding that where one statute in comprehensive terms covers the subject and another later statute embraces a particular part of the same subject, the two should be construed together, unless a different legislative intent appears.

In the case of *State vs. Johnson*, *supra*, the Court said:

"It is to be presumed that different acts on the same subject, passed at the same session of the Legislature, are imbued with the same spirit and actuated by the same policy, and they should be construed each in the light of the other. The legal presumption is that the Legislature did not intend to keep really contradictory enactments in the statute book, or to effect so important a measure as the repeal of a law without expressing an intent to do so. An interpretation leading to such a result should not be adopted unless it is inevitable. The rule of construction in such cases is that if courts can, by any fair, strict, or liberal construction, find for the two provisions a reasonable field of operation, without destroying their evident intent and meaning, preserving the force of both, and construing them together in harmony with the whole course of legislation, it is their duty to do so."

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Construing the acts in question, passed at the same session of the Legislature, within one week's time, it cannot be said that the former act was repealed by the latter by implication, but an evident intention of the Legislature is shown to retain the provisions of the former act except insofar as modified by the latter act. The principal purpose of the later act was to except Lemon Bay and its tributaries from the provisions of the act passed one week before.

August 17, 1935.

FISHING, SALT AND FRESH—CHAPTER 17012 OF 1935
CONSTRUED—ST. JOHNS RIVER

Dear Sir:

I beg to acknowledge your favor of the 14th, enclosing a copy of my opinion with reference to fishing for black bass in Lake Okeechobee, under the provisions of Chapter 10123, Acts of 1929, as amended by House Bill 735, Chapter 17012, Acts of 1935, in which you ask if this opinion holds good with reference to the St. Johns River.

You will note that House Bill 735, in Section 11-A thereof, the first paragraph of which reads as follows:

"SECTION 11-A. For the purpose of this Act Lake Okeechobee and Doctors Lake shall be and is considered salt water and fish, except black bass, may be taken at any time and used by the citizens of this State and persons not citizens thereof subject to the restrictions and reservations herein imposed by this Act or otherwise."

is applicable to Lake Okeechobee and Doctors Lake only and does not apply to the St. Johns River.

August 12, 1935.

LOCAL SHELL FISH LAWS—DUTY OF SHERIFF

Dear Sir:

I am in receipt of your letter of the 12th instant, making inquiry if it is the Sheriff's duty to assist you in enforcing local county shell fish laws.

In reply your attention is called to Section 1841, Compiled General Laws of Florida, 1927, which provides that the Shell Fish Commissioner or his duly authorized deputies shall enforce the provisions of the article relating to salt water fisheries. I find no specific statute requiring the Sheriff to assist you in the enforcement of such laws, but your atten-

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tion is called to Section 2856 of the above mentioned compilation, which provides that it shall be the duty of the Sheriffs in their respective counties to execute all writs, processes and warrants directed to them.

August 6, 1935.

LICENSES FOR BOATS AND FISH DEALERS

Dear Sir:

I have your letter of the 26th ultimo making several inquiries with reference to licenses for boats and fish dealers in which you refer to House Bill No. 12, Chapter 17009, of 1935 and other statutes. Your attention is called to House Bill No. 503, Chapter 17011, which appears to supersede House Bill No. 12. Your questions will be answered in numerical order.

- Q. 1. "Please advise if boat license is due this Department by fisherman who catches fish outside of the State limit in the Gulf of Mexico if he brings fish to Florida port?"

In answer to Question 1 your attention is called to Sections 1828 (1260) and 1829 (1261), Compiled General Laws of Florida, 1927, requiring a boat license for boats engaged in the fishing industry in this State. Your further attention is called to Section 1832 (1264), Compiled General Laws of Florida, 1927, which provides that this license shall be required of all boats engaged in fishing or *freighting fish*, or otherwise engaged in the fishing industry. Since the law requires this license for freighting fish, it would appear that this question should be answered in the affirmative.

- Q. 2. "Is wholesale salt water fish dealer's license due this Department by fisherman who catches fish outside of State limit in the Gulf of Mexico, lands them on Florida soil and transports same by truck to adjoining States. Fish are not sold in Florida?"

In reply to Question 2 your attention is called to Section 1827 (1259), Compiled General Laws of Florida, 1927, defining fish dealers. In my opinion Question 2 should be answered in the negative.

- Q. 3. "Is a wholesale fish dealer's license required when a fisherman pays boat license to operate boat in salt water, catches fish and sells them direct to wholesale or retail fish dealers at the wharf. Fisherman does not transport his fish?"

In reply to Question 3 your attention is again called to Section 1827 (1259), Compiled General Laws of Florida, 1927. In my opinion Question 3 should be answered in the negative.

- Q. 4. "Please advise kind of license due if several persons fish on shares and divide the profits with the owner of boat."

SALT WATER FISHING

In reply to Question 4 your attention is called to a letter addressed to you from this office, under date of February 13, 1935, the last two paragraphs of which read as follows:

"In my opinion the provisions of the law allowing a fisherman to sell the fish which he catches himself without procuring a license therefor would not apply where fishermen join together under a co-operative plan to sell the combined catch of the group and come in competition with other wholesale or retail dealers who are required to pay a regulating license. The exemption from license appears to apply only in cases where the individual fisherman sells only the fish he alone has caught.

"Directly answering your inquiry, I beg to say in my opinion where fishermen join together and fish and sell their combined catch in a co-operative plan, they are required to pay the regular license prescribed by Section 1868 for other wholesale or retail dealers according to whether they do a wholesale or retail business."

October 2, 1935.

CLOSED SEASON ON MULLET IN ESCAMBIA COUNTY

Dear Sir:

I have your letter of the 28th ultimo making inquiry if Section 3 of Chapter 14,029, Special Acts of 1929, providing for a closed season on mullet in Escambia County, has been repealed.

In reply I beg to say I do not find any statute repealing said Act.

October 2, 1935.

SALT WATER FISH DEALERS OPERATING UNDER STORE LICENSE

Dear Sir:

Answering your letter of the 28th ultimo I beg to say in my opinion salt water fish dealers are not relieved of the fish dealers' license required under Chapter 17,011, Laws of Florida, Acts of 1935, even though they may have a store license under Chapter 16,848, Laws of Florida, Acts of 1935. Your particular attention is called to Section 17 of Chapter 16,848, above mentioned, reading as follows:

"OTHER LICENSES. The tax imposed by this Act shall not repeal any other license tax, occupational tax, excise tax, or tax levied by law as a condition precedent to engaging in business in the State of Florida, unless expressly repealed hereby."

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January 21, 1935.

CONSTRUCTION OF SHELL FISH LAWS

Dear Sir:

I am in receipt from your office of letter, under date of December 27, 1934, from Mr. ———, Assistant Counsel, Production Credit Corporation of Columbia, Columbia, South Carolina, relative to his prior letter of November 26, 1934, containing two inquiries, as follows:

"(1) Is an oyster lease subject to cancellation by the Commissioner of Agriculture for failure to mark off the leased premises as required by the Shell Fish Commission, or for failure to plant a sufficient amount of seed or shell oysters?

"(2) May a production credit association take an assignment, mortgage, or other hypothecations of an oyster lease to secure money lent, and do the limitations upon acreage leased by one person apply to an association under such circumstances?"

Answering the first inquiry, I refer you to Section 1800, Compiled General Laws of Florida, 1927, which provides that the Shell Fish Commissioner shall require the lessee to stake off and mark the water bottoms leased and subjecting the lessee to a fine not exceeding \$25.00 for failure to comply with such orders. I also refer you to Section 1801 of the same compilation, which requires the lessee within one year from the commencement of the lease to place under cultivation at least one tenth of the water bottom leased, and each year thereafter to place in cultivation at least one tenth of the water bottom leased until the whole shall have been put in cultivation by the planting thereon of at least two hundred barrels of oysters, shell or its equivalent in cultch to the acre. Your attention is further called to Sections 8077 and 8081, Compiled General Laws of Florida, 1927, with reference to penalties. I find no specific statutory authority for the Commission of Agriculture to cancel an oyster lease for failure to mark off the leased premises as required by the Shell Fish Commissioner or for failure to plant a sufficient amount of seed or shell oyster.

In this connection, however, your attention is called to the form of lease which is in the nature of a contract between the lessor and lessee containing the following provision:

"This lease is made under authority of Chapter 16,178, Acts of 1933, Laws of Florida, and subject to all terms, conditions, reservations and restrictions provided for in leases of water bottoms in this State, as therein authorized. And the Lessee, ———, heirs, and assigns, do hereby agree that upon a failure upon his or their part to fully perform and observe at the time prescribed and in the manner provided, each and every of the terms, con-

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ditions, reservations and restrictions required of lessees under said Act to be performed and observed, that then and in that case all rights of said lessee, _____, heirs and assigns hereunder shall cease and the estate herein conveyed shall immediately thereon revert to the State of Florida."

Under this form of lease it appears that shell leases may be forfeited for failure to comply with requirements under the law.

Answering the second question, I beg to say that I find nothing in the statute to prohibit a Production Credit Association from taking an assignment, mortgage or hypothecation of an oyster lease to secure money lent.

Further answering said second inquiry with reference to limitation upon acreage leased to one person, I refer you to Section 8 of Chapter 16,178, Laws of Florida, Acts of 1933, which provides for leases without limitations as to the number of acres which any person, firm or corporation may lease, hold or control except in so far as the said Board in its discretion may fix. In view of this statute I do not think a Production Credit Association would be limited to any certain acreage in taking assignment, mortgage or hypothecation of oyster leases. Your attention is further called to Section 1802, Compiled General Laws of Florida, 1927, with reference to transfer of leases and with reference to sale of leased grounds by those having acquired in excess of 500 acres.

In connection with this matter it may not be amiss to call to your attention Chapters 16,093 and 16,094, Laws of Florida, Acts of 1933, applying only to Franklin County, the first of which Acts provides for ownership or assignment of more than 500 acres for which application for lease was filed and deposit made for cost of survey prior to January 1, 1933; the second of which Act provides for the taking of seed oysters in certain amounts from the natural oyster beds in such county for planting purposes only.

April 29, 1935.

STATE CONSERVATION DEPARTMENT—SALT WATER FISH—
SHELL FISH—CRABS, LICENSE

Dear Sir:

I am in receipt of your letter of the 27th instant, making inquiry if the crab is a shell fish.

We have statutes relating to salt water fish and other statutes relating to shell fish. Salt water fish is a general term and includes practically all animals of the sea, both vertebrate and invertebrate. Shell fish is a special class of salt water fish and includes oysters, clams and crustaceans. The crab is a crustacean and may be classed as a shell

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fish, but it is at the same time a member of the general class of salt water fish.

Our shell fish statutes make no provision for license taxes on dealers in crabs but the general salt water fish dealers' licenses apply to crabs.

April 25, 1935.

STATE CONSERVATION DEPARTMENT—FISH DEALERS' LICENSES

Dear Sir:

I am in receipt of your letter of the 22nd instant with reference to fish dealers' licenses. You state there has recently been awarded a contract for furnishing fish to the United States Naval Air Station at Pensacola, and this contract was awarded to a retail fish dealer. You make inquiry if the party furnishing such fish should be required to have a wholesale dealer's license.

Your letter does not indicate whether you refer to fresh or salt water fish dealers. If you refer to fresh water fish dealers answer to your inquiry is found in Section 31, Chapter 13,644, Laws of Florida, Acts of 1929, defining fresh water fish dealers in the following language:

"A wholesale dealer shall be considered one who sells or ships fish by the barrel or half barrel or in bulk * * *."

"A retail dealer shall be considered any one who sells fish or supplies in any manner direct to the consumer or wholesale dealer * * *."

From the above definitions it appears that if the party mentioned in your letter sells fresh water fish by the barrel or half barrel or in bulk he would be required to have a wholesale dealer's license, otherwise he would be required to have only a retail dealer's license.

If your inquiry relates to salt water fish dealers your attention is directed to Section 1827, Compiled General Laws of Florida, 1927. The first part of said Section, however, relating to amount of license, appears to be superseded by Section 1866, being Section 7 of Chapter 10,123, Acts of 1925.

The last part of said Section 1827 remaining in force and defining salt water fish dealers, reads as follows:

"A wholesale fish dealer shall be considered any one who sells fish to a retail dealer other than the person who catches the fish, and a retail dealer shall be considered any one who sells fish directly to the consumer * * *."

SALT WATER FISHING

You will note that the statutory definition of fresh water fish dealers takes into consideration the matter of volume, while the statutory definition of salt water fish dealers does not take volume into consideration. Under the definitions above quoted of salt water fish dealers the party mentioned in your letter could not be considered a wholesale dealer for the reason that it does not appear that he sells to a retail dealer. He would, therefore, have to be classed as a retail dealer.

March 6, 1935.

CONSERVATION, EXPENSES

Dear Sir:

In your letter of the 5th instant, you refer to Section 5 of Chapter 16178, Laws of Florida, Acts of 1933, and request my opinion as to whether the State Board of Conservation may direct the use of the necessary funds which the Department now has in hand to supplement the funds provided by the Appropriation Bill of 1933.

Section 5 of Chapter 16178 merely had the effect of transferring what funds, if any, were on hand to the credit of the departments and officers abolished by Section 3 of the Act to the State Conservation fund, and their consolidating the same into one fund for the purpose of taking the control of such fund or funds, if any, from the departments and officers abolished, and placing same with the State Board of Conservation.

It is my opinion that the department is confined to the amounts fixed in the General Appropriation Act for the biennium beginning July 1, 1933, as to salaries and necessary and regular expenses of the Department, and that this cannot be exceeded as to these particular items.

Section 2 of Chapter 15858, Acts of 1933 (the General Appropriation Act), provides that any sum or sums therein appropriated for salaries, if not required for such purposes, may be applied to other necessary and regular expenses of the Department, to which they are appropriated, but in no event shall any sum or sums specifically appropriated for expenses be applied to salaries.

The combined salaries appropriated for the three departments abolished amounted to \$100,000, and that for necessary and regular expenses amounted to \$105,535.

Under Section 6 of the Conservation Act, all of this may be expended for the two items mentioned, if necessary to carry out the provisions of the Act in relation to the work and duties mentioned in Section 2 thereof. But these sums cannot in my opinion be lawfully exceeded.

SALT WATER FISHING

February 28, 1935.

SALT WATER FISH—CRABS AND CRAYFISH—WHOLESALE AND
RETAIL DEALERS*Dear Sir:*

I am in receipt of your letter of the 25th instant, readings as follows:

"Would the sale and shipment of crabs and crayfish direct to New York City restaurants and clubs be considered a retail or a wholesale business."

In reply I refer you to the last sentence in Section 1827, Compiled General Laws of Florida, 1927, defining wholesale and retail salt water fish dealers as follows:

"A wholesale fish dealer shall be considered any one who sells fish to a retail dealer other than the person who catches the fish, and a retail dealer shall be considered any one who sells fish directly to the consumer: Provided, however, that any one holding a merchandise license may sell salt cured fish without payment of such retail dealer's license."

From the foregoing quotations you will note that a wholesale salt water fish dealer is one who sells to a retail dealer. Under this definition the sale and shipment of crabs and crayfish direct to New York City restaurants and clubs would constitute a retail dealer unless such restaurants and clubs in addition to their regular business should also be retailers of salt water fish.

February 13, 1935.

STATE CONSERVATION DEPARTMENT—SALT WATER FISHERMEN
—LICENSE WHEN SELLING ON CO-OPERATIVE PLAN*Dear Sir:*

I am in receipt of your letter of the 11th instant, referring to the salt water fishing laws which permit a citizen to sell without license fish that he may catch himself. You make inquiry if such fishermen, when joining together and selling their combined catch in a co-operative plan, would be subject to a wholesale dealer's license.

In reply your attention is called to Section 1827, Compiled General Laws of Florida, 1927, all of which seems to be superseded by Section 1866 of the same compilation, except the last sentence therein defining wholesale and retail dealers, and reading as follows:

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"A wholesale fish dealer shall be considered any one who sells fish to a retail dealer other than the person who catches the fish, and a retail dealer shall be considered any one who sells fish directly to the consumer: Provided, however, that any one holding a merchandise license may sell salt cured fish without payment of such retail dealer's license."

Section 1866 is the statute prescribing the amount of wholesale and retail fish dealers' licenses to be paid.

In my opinion the provisions of the law allowing a fisherman to sell the fish which he catches himself without procuring a license therefor would not apply where fishermen join together under a co-operative plan to sell the combined catch of the group and come in competition with other wholesale or retail dealers who are required to pay a regular license. The exemption from license appears to apply only in cases where the individual fisherman sells only the fish he alone has caught.

Directly answering your inquiry, I beg to say in my opinion where fishermen join together and fish and sell their combined catch in a co-operative plan, they are required to pay the regular license prescribed by Section 1866 for either wholesale or retail dealers according to whether they do a wholesale or retail business.

January 25, 1935.

STATE CONSERVATION DEPARTMENT—EXTENSION OF OPEN
SEASON ON MULLET

Dear Sir:

I am in receipt of your letter of the 25th instant, the second paragraph of which reads as follows:

"Is there any provision in Chapter 16178, Laws of 1933, copy of which is also enclosed, which grants authority to the State Board of Conservation to extend the open season for mullet?"

Section 8060, Compiled General Laws of Florida, 1927, (Sec. 5827, R. G. S.) being originally Section 8 of Chapter 6877, Acts of 1915, provides for a closed season on mullet, but this section appears to be superseded by Section 1861, Compiled General Laws of Florida, 1927, being originally Section 3 of Chapter 10,123, Acts of 1925, which is subsequent to Section 8060. Section 1861 appears to be the controlling law relating to closed seasons on mullet and I quote you the same as follows:

"It shall be unlawful for any person, persons, firm or corporation to take, have in his or their possession, buy, sell, offer for sale or ship any fresh or freshly salted mullet or mullet

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roe, in this State between the first day of December of any year and the twentieth day of January of the next succeeding year. The possession of any fresh or freshly-salted mullet, or any fresh or freshly salted mullet roe, by any person, persons firms or corporation, during the closed season shall be prima facie evidence of the violation of this law; Provided, however, that anyone having any fresh or unsplit mullet, or roe on hand at the beginning of the closed season may have five days in which to dispose of same."

I have read very carefully Chapter 16,178, Laws of Florida, Acts of 1933, creating the State Board of Conservation and especially Sections 7 and 10 of said Act, but I do not find in said Act or any other statute where the State Board of Conservation, or any other Board or officer, is authorized to extend the open season on mullet. All the powers granted to the State Board of Conservation to make rules and regulations or perform any other services are required to be in conformity to and not inconsistent with the law.

January 21, 1935.

PERSONS BUYING AND SHIPPING SALT WATER FISH FOR
ACCOUNT OF OTHERS IS NOT A WHOLESALE FISH DEALER

Dear Sir:

In your letter you state the following:

"Mr. _____, Manager of Armour's Cold Storage Plant in Jacksonville, Florida, buys fish from fishermen with money sent to him from Georgia. He puts fish on cold storage and ships same to the people he buys them for when they notify him."

You request my opinion as to whether or not Mr. _____ is a wholesale fish dealer and as such should obtain a license from your Department under Sections 1827 or 1866, Compiled General Laws of Florida, 1927.

The Legislature by Section 1827, *supra*, defined a wholesale fish dealer as "anyone who sells fish to a retail dealer other than the person who catches the fish." According to your statement of fact, Mr. _____ does not *sell* fish and he only buys fish for the account of those who send him the necessary money with a request to make purchases for their accounts. He ships these fish from time to time as directed by the owners.

Based upon the above facts, it is my opinion that Mr. _____ is not a wholesale dealer in salt water fish and is not required to obtain a license under Sections 1827 or 1866, *supra*.

SALT WATER FISHING

January 7, 1935.

• FISH, SALT AND FRESH WATER DEFINED

Dear Sir:

This refers to your favor of January 7, requesting my opinion as to the law of demarkation of salt and fresh water.

The law governing this situation provides that all lakes, rivers, canals, creeks and other fresh water ways in Florida up to such points as the salt water commingles to such extent that it makes such waters unpalatable and unfit for human consumption, are fresh waters.

Thus it is that the Legislature has fixed a definite line to be determined by whether or not the waters on that line so commingled as to make the water unpalatable for human consumption. If the water is palatable, then it is fresh water.

This line of demarcation, of course, in the event of any litigation in Court, would have to be determined upon competent evidence properly submitted to the Court.

The Legislature, however, has also said that the State Game Commissioner by and with the consent of the Board of County Commissioners, except in certain named counties, may fix this line, but nevertheless, it is my opinion that, under the law, they would not have a right to fix the line at a point where the waters were commingled and where the waters were unpalatable for human consumption.

You further request my opinion as to what constitutes fresh water fish.

The law defines fresh water fish to be all of the class Pisces that are indigenous to fresh water. This means all fish that are native to fresh water, not necessarily that are spawn in fresh water, but fish that have their home and normally and naturally live in fresh water.

June 25, 1935.

STATE CONSERVATION DEPARTMENT—SALT WATER FISH
DEALER'S LICENSE*Dear Sir:*

Answering your letter of the 24th instant, I beg to say I do not find any statute authorizing the issue of a wholesale salt water fish dealer's license for the remainder of the license year for any sum less than the annual license prescribed by law.

November 21, 1936.

SALT WATER FISHING—DEALERS' LICENSES—OPERATORS
OF BOATS

Dear Sir:

I am in receipt of your letter of the 19th instant enclosing communication from Hon. _____ of Pensacola, under date of the 16th instant, the first paragraph of which reads as follows:

"* * * Thank you very much for your nice letter of 5th. I have advised the fishermen who are the owners of their own boats, and who had complied with the laws of the United States and the State of Florida, with reference to licensing, equipping, and operation of said boats, including the license of the State of Florida, for the use of the boat to engage in the fishing business, that they had the right to sell their fish direct from their boats at the landing or by their own trucks to licensed retail dealers in the City of Pensacola, and the County of Escambia, or to non-resident dealers, provided that each of said sales, so made, was solely of fish caught by the individual boat owner or his crew in the operation of the fishing boat as aforesaid."

You request my advise with reference to the above. Your attention is called to the latter part of Section 1827, Compiled General Laws of Florida, 1927, defining salt water fish dealers and reading as follows:

"* * * A wholesale fish dealer shall be considered any one who sells fish to a retail dealer other than the person who catches the fish, and a retail dealer shall be considered any one who sells fish directly to the consumer: Provided, however, that any one holding a merchandise license may sell salt cured fish without payment of such retail dealers' license."

The Legislature of 1935 in Chapter 17,009 amended Section 1866 of the Compiled General Statutes and the second paragraph of said Chapter defines salt water fish dealers, and it would appear to supersede the definition of such dealers in Section 1827, above quoted, except for the fact that the same Legislature later passed Chapter 17,011 of 1935, amending Section 1066 and repealing all laws in conflict therewith. It, therefore, appears that Chapter 17,011 repeals and supersedes Chapter 17,009, and since there is no definition of salt water fish dealers in said last Act, Chapter 17,011, it appears that the definition of dealers prescribed in Section 1827 is still effective.

From a close examination of the definition of wholesale and retail salt water fish dealers it appears that no fish dealers' license is required by the operators of boats taking salt water fish in order for them to sell the same to retail dealers.

SALT WATER FISHING

SHELL FISH—OYSTERS—TRANSPORTATION DURING CLOSED SEASON—LOCAL AND OUT-OF-STATE PRODUCTS

Dear Sir:

I am in receipt of your letter of the 3rd instant, the last paragraph of which reads as follows:

"Would thank you to advise me if the Railway Express Agency, a common carrier handling interstate and intrastate business, should accept oysters for shipment from one point in the state to another point in the State of Florida, during the month of September and whether there would be any difference in the law with respect to oysters that were caught in the State of Florida or other States."

In reply your attention is called to Section 1794, Compiled General Laws of Florida, 1927, containing the following language:

"No railroad, steamboat or other common carrier, shall knowingly transport any raw oysters or clams during the closed season, * * * and it shall be unlawful for any common carrier to transport any raw oysters between the fifteenth day of April and the first day of October of each year. * * *"

In view of the foregoing it is unlawful for any common carrier to transport Florida oysters between the 15th day of April and the 1st day of October of each year.

As to common carriers transporting oysters from waters outside the State during said closed season, I beg to say that I find no specific provision in the shell fish laws against such transportation and in view of the decision of our Supreme Court pertaining to the related subject of salt water fish in the case of *White v. State*, 93 Fla. 905, 113 So. 94, I beg to say in my opinion common carriers are not prohibited from transporting oysters in the State when the same are from waters outside of the State. I quote you the third headnote in said case as follows:

"Statutes which are intended to regulate and protect the salt water fishing industry of the state should contain an express provision that its terms shall apply to salt water fish imported from other jurisdiction, if such be the legislative purpose, otherwise the provisions of the act will be construed as limited to the waters of the state's jurisdiction."

See also the body of opinion in *Taylor vs. Penton*, 99 Fla. 1067, 128 So. 499, containing the following language:

"Some courts have adopted the rule that a statute like the one under review can have no application to fish taken in another state unless made so by express language, while other courts

SALT WATER FISHING

hold that the penalty for taking, having in possession, or selling game or fish applies to all game or fish whether domestic or foreign. 12 R. C. L. 696, citing cases supporting both rules. This court is committed to the former rule. *White v. State*, 93 Fla. 905, 113 So. 94. The reason for the rule being that such statutes are penal and should punish only those acts which are specifically condemned."

December 17, 1936.

SALT WATER FISHING—SEINES—SECTION 8055, C.G.L.—RETURN
TO WATER FISH IMPROPERLY CAUGHT

Dear Sir:

I am in receipt of your letter of the 14th instant, the body of which reads as follows:

"Section 8055 of Compiled General Laws, 1927, makes it unlawful for any seines, etc., of greater length than 350 yards to be fished, except that nets of greater length than 350 yards may be used in regular mullet and mackeral fishing.

"A delegation of fishermen from Martin County called at my office today to find out whether or not if a net or seine that is more than 350 yards long is used in mullet and mackeral fishing and other fish are caught then do the other fish have to be returned to the water? I gave them the opinion that the other fish would have to be returned to the water, but they insist that I take this matter up with you and see whether or not you will give an opinion on this point."

In reply I beg to say that I agree with you and your opinion that under the provisions of said Section 8055, Compiled General Laws of Florida, 1927, fish other than mullet and mackeral taken in seines more than 350 yards in length should be returned to the water. The apparent purpose of said Section is the conservation and protection of salt water fish by limiting the length of seines for the taking of such fish. The particular proviso, removing such limitation with reference to mullet and mackeral, cannot in my opinion be construed as a removal of such limitation on other salt water fish. Otherwise the apparent purpose of the Act would be defeated.

SECTION 3

FRESH WATER FISHING

June 18, 1936.

CLOSED SEASON ON TROUT—SALE OF FROZEN TROUT

Dear Sir:

I am in receipt of your letter of the 16th instant enclosing communication from _____, broker in fresh and frozen seafoods, Jacksonville, Florida, in which inquiry is made if it is lawful to sell frozen salt water trout during the closed season when these fish were caught before the closed season.

I refer you to Section 1863, Compiled General Laws of Florida, 1927, originally Section 4 of Chapter 10,123, Laws of Florida, Acts of 1925, reading as follows:

"It shall be unlawful for any person, persons, firm or corporation to take, have in his or their possession, buy, sell, offer for sale or ship, or for any express company, railroad or common carrier to transport any of the fish known as salt water trout from the fifteenth of June to the fifteenth day of July of each year."

In reply I beg to say the above statute appears to prohibit the sale of salt water trout during the closed season between June 15th and July 15th, whether the same may be fresh or frozen fish caught and frozen before the closed season.

February 21, 1936.

DEALERS' LICENSE FOR SELLING FRESH WATER MINNOWS

Dear Sir:

I have your letter of the 20th inst., the body of which reads as follows:

"Will you please give the writer your opinion as to whether or not a fresh water fish dealer's license as provided for by Section 31, Chapter 13644, is required of persons who sell fresh water minnows for live bait."

Section 31, Chapter 13,644, Laws of Florida, Acts of 1929, contains the following:

"No person shall engage in the business of wholesale or retail fresh-water fish dealer until such person has taken out a license to carry on such business, as provided for in this Act."

FRESH WATER FISHING

I find no exemption from dealers' license of dealers in fresh-water minnows for live bait and I am advised that your Department has construed the law to require such dealers to take out a dealer's license and it has been the custom of the Department for sometimes to require such dealers to take out licenses.

In view of the premises it is my opinion that a fresh-water fish dealer's license is required of persons who sell fresh-water minnows for live bait.

February 10, 1936.

DEALERS' LICENSE—ALIENS—BOAT LICENSE

Dear Sir:

I am in receipt of your letter of the 8th instant, making the following inquiries:

- (a) "Does a person catching catfish on trotline have to have a dealer's license to sell his fish?
- (b) "Does he have to have a commercial fisherman's boat license to operate his boat in such fishing?
- (c) "Do persons over the age of sixty-five have to procure license to sell their fish, that is catfish caught on trotline?
- (d) "Does an alien have to procure license to trotline for catfish, if he sells same?

In reply I beg to say in my opinion all of the above questions should be answered in the affirmative and I refer you to the following statutes: As to Question (a) see Sections 1977 (31), Compiled General Laws of Florida, 1934 Supplement; as to Question (b) see Section 1977 (32) of the same compilation; as to Question (c) see Section 1977 (31) of the same compilation; as to Question (d) see Sections 1977 (19) 1977 (20) of the same compilation.

Answering your further inquiry I beg to say that House Bill No. 503, Chapter 17,011, Laws of Florida, Acts of 1935, relates to salt water fish and not fresh water fish.

August 17, 1935.

FRESH WATER FISHING LICENSE—CO-PARTNERSHIP

Dear Sir:

I beg to acknowledge receipt of your letter of August 14, in which you request an opinion as to licenses required under the facts stated in your letter; namely,

FRESH WATER FISHING

"Men are fishing in a certain county in this State legally with nets. The owner of the net takes 1/5 of the gross receipts from the sale of the fish caught; the other three or four men, as the case may be, take 1/3 or 1/4 of what is left."

I beg to advise that the same license fees should be required and paid which you would collect from a partnership with the same number of members engaged in the retail sale of fish. In other words, the fact that men are paid a percentage of the gross receipts from the sale of fish caught, after the fish are sold, as compensation for their employment, will not place them on any different standing than if they were paid a salary for their labor in catching the fish.

The same principal would apply to the payment of a rental for the boats and net.

August 12, 1935.

WELAKA GAME AND FISH HATCHERY—CHAPTER 17016, ACTS OF 1935—CHAPTER 16178, ACTS OF 1933—CHAPTER 13644, ACTS OF 1929—CHAPTER 11838, ACTS OF 1927—CHAPTER 10123, ACTS OF 1925

Dear Sir:

This in further response to the inquiry contained in your communication of July 24, 1935, which was answered in my opinion under date of August 1, 1935.

There is in contemplation a lease to the Federal government or one of its agencies, of the Welaka Game and Fish Hatchery, and the following questions have arisen in connection with that transaction, which questions will be answered immediately following their statement:

1—In whom is the title to the said Hatchery?

By the above mentioned Act of 1933 all the properties, accounts and obligations of the several departments and offices abolished by the said Act were transferred to the State Board of Conservation created thereby. Therefore, the title to such hatchery was vested in the said State Board of Conservation.

By Chapter 17016, Acts of 1935, as previously ruled in my opinion of June 10, 1935, there was created a Commission of Game and Fresh Water Fish, and by Section 3 there is vested in such Commission all moneys, properties and supplies theretofore at any time accumulated or acquired by the State Game Commissioner or by the State Board of Conservation in the performance of the duties, powers and authority of law vested in the State Game Commissioner.

FRESH WATER FISHING

Thus it follows that title to and jurisdiction over the said Welaka Fish Hatchery is now vested in the Game and Fresh Water Fish Commission created by the said Act of 1935.

2.—Your second question is whether the said property may be leased to an agency of the Federal government, and if so, by whom, and who should execute the said lease.

As stated in my opinion of August 1, 1935, there being insufficient funds to maintain and operate the said hatchery, it may be leased to the Federal government or its agency for the purpose of its being maintained and operated for the propagation of wild game and fish. Such lease should be entered into by the Game and Fresh water Fish Commission and should be executed by all members of the said Commission, as and constituting the same.

3.—Your next question is for what term may the lease run.

Inasmuch as we understand that such lease is to be for a term of two years, I need go no further than state that in my opinion such lease may be entered into for a period of two years.

4.—Your fourth question concerns the proviso contained in my said opinion of August 1, 1935, to the effect that such lease could be entered into provided that the said hatchery is maintained and operated in such manner as that the State will derive the same benefits and advantages therefrom as was intended by its authorization. I do not understand this to mean that the Federal government must bind itself to hatch the same number of fish and place them in the streams of Florida as would have been available should the State continue to operate the said hatchery during the term of such lease. If, because of lack of funds, the Game and Fresh Water Fish Commission finds it necessary to shut down the said hatchery during the next two years, and during which time it would deteriorate in value and be of no service to the people of the State of Florida, it is my opinion that in the exercise of their discretion the same may be leased to the Federal government or one of its agencies, and that if it is agreed that the same will be operated during such time and be returned to the State agencies at the termination of the lease in the same condition in which it is now, ordinary wear and tear and damage by the elements excepted, it appears to me that the interests of the State of Florida are adequately protected.

August 1, 1935.

WELAKA GAME AND FISH HATCHERY

Dear Sir:

To your letter of July 24, 1935, you attach letter from Assistant Regional Director of Agricultural Adjustment Administration, and request

FRESH WATER FISHING

instructions as to proper procedure with reference to the subject thereof. The question for determination relates to the transfer from the State to the Federal Government of the Welaka Game and Fish Hatchery by lease or otherwise.

Section 9 of Chapter 10123, Laws of Florida, Acts of 1925, authorizes the establishment and maintenance of fish hatcheries in the State of Florida by the Shell Fish Commissioner. Title to the property in question, that is, the Welaka Game and Fish Hatchery, was taken in the name of the Shell Fish Commissioner.

In 1933 the Legislature by Chapter 16178 created a State Board of Conservation with all the powers theretofore vested in the Shell Fish Commissioner, the Fresh Water Fish and Game Commissioner, and State Geologist, and abolished the three last named offices and departments, and by Section 4 of said Act, "all properties, accounts and obligations of the several departments and offices abolished by this Act, shall upon the effective date of this Act, be transferred to the State Board of Conservation."

By this provision the title to Welaka Game and Fish Hatchery was vested in the State Board of Conservation.

By House Bill No. 912, Chapter 17016, Laws of Florida, Acts of 1935, the Department of Game and Fresh Water Fish and the office of State Game Commissioner were created.

By Section 3 of the Act, all properties theretofore accumulated or acquired by the State Board of Conservation was vested in the State Game Commissioner as created by said Act. By this provision the title to the Welaka Game and Fish Hatchery was vested in the State Game Commissioner upon the effective date of House Bill No. 912, which was July 1, 1935.

The purpose for the establishment and maintenance of the Welaka Game and Fish Hatchery and the acquisition of the property thereof, was and is the propagation of fresh water fish in the State of Florida, and of wild game therein, title to which is under the law in the State.

It is my opinion, therefore, that if the Department of Game and Fresh Water Fish finds itself unable to maintain and operate the said Welaka Game and Fish Hatchery, because of the lack of funds, it is authorized to transfer the same by contract to the Federal Government or its agency, for the purpose and to the end that the same may be maintained and operated for the propagation of wild game and fresh water fish; provided the same is maintained and operated in such manner as that the State will derive the same benefits and advantages therefrom as was intended by its authorization.

Any contract for the transfer, maintenance and operation by the Federal Government or its agency of such property, could be made to

FRESH WATER FISHING

continue during and throughout the present term of office of said Commission, which will be not less than two years.

The Legislature of Florida will convene in regular session in April of 1937. It will no doubt transfer or authorize the transfer of said property to the Federal Government or its agency, realizing the necessity therefor and that the same can and will be operated by the Federal Government or its agency for the same purpose and to the same benefit to the State, as if operated by the State.

July 3, 1935.

FISH, SHIPMENT OR SALE OF BLACK BASS

Dear Sir:

I have your letter of the 3rd instant, enclosing a letter from the Railway Express Company requesting a ruling with reference to House Bill No. 180, Chapter 17014, Laws of Florida, Acts of 1935, which is an Act to prohibit the sale, shipment, purchase, barter or exchange of black bass.

Section 1 of said Act provides among other things that it shall be unlawful to transport for sale or to transport out of the State of Florida any large or small mouth black bass "provided that holders of valid fishing license may carry out of the State as personal baggage, or transport one day's bag limit of black bass." You will note also the following language contained in said Section: "No common carrier shall knowingly transport or receive for transportation within the State of Florida any black bass."

In my opinion said Act prohibits common carriers from transporting black bass even though the proposed shipment consists of only one day's bag limit and that any person transporting even one day's bag limit must carry the same along with him as personal baggage.

June 29, 1935.

STATE CONSERVATION DEPARTMENT

Dear Sir:

I am in receipt of your letter of the 26th instant referring to House Bill No. 912, Chapter 17016, of the 1935 Legislature relating to the Department of Game and Fresh Water Fish and particularly referring to Section 3 of said Act relating to the transfer of certain funds from the State Conservation Department to the Game and Fresh Water Fish Department. You make inquiry as to the proper disposition of the funds.

FRESH WATER FISHING

In reply may I suggest that it would probably be well to request the State Auditing Department to ascertain the correct amount for transfer under the law.

May 16, 1935.

FISH, RESTAURANT SERVING BLACK BASS

Dear Sir:

Replying to yours of May 15, in which you ask to be advised whether or not, under the provisions of House Bill 180, Chapter 17014, which became effective May 2, 1935, a person operating a boarding-house or restaurant who catches black bass and serves the same in his boarding-house or restaurant would be violating the provisions of said Act, permit me to say the title of the Act, that is, House Bill 180, which became a law on May 2, 1935, reads as follows:

"An act to prohibit the sale, shipment, purchase, barter or exchange of large or small mouth black bass within the State of Florida."

In view of the provisions of Section 1 of this Act, which is consonant with the title quoted above, permit me to say it is my opinion that it would be a violation of the law for an individual owner of a boarding-house or restaurant to serve for pay black bass within the State of Florida to patrons of his place of business.

It is my view that the Act under consideration was intended to protect large and small mouth black bass against sale, shipment, purchase, barter or exchange for commercial purposes. I fail to see where there would be a substantial distinction between selling the fish raw and selling them in a restaurant or boarding-house, even though the owner of said boarding-house or restaurant did catch the fish himself.

February 5, 1935.

GAME LAWS—POSSESSION OF GAME COMING FROM FOREIGN COUNTRIES (SECTIONS 1977 (50) AND 1977 (69), C. G. L. 1927, 1934 SUPPLEMENT; SECTIONS 50 AND 69, CHAP. 13644, LAWS OF FLA., ACTS OF 1929)

Dear Sir:

This acknowledges your inquiry of January 31, with reference to the above statutes.

Your inquiry arises as a result of an inquiry to your department from a dealer who handles frozen game originating in England, Uruguay and

FRESH WATER FISHING

Manchuria. This dealer desires to know whether or not such game may be shipped into the State of Florida, and, if so, the procedure necessary to secure any license, permit or tag which might be necessary.

Section 50 of the above mentioned statutes of 1929 provides:

"No person shall take, or be in possession of, any ruffed grouse, Mongolian, Chinese, ring-necked or English pheasants or any other imported game birds except same may be possessed for propagation purposes under permit from State Game Commissioner."

Section 69 of said Act provides as follows:

"In all cases where possession, transportation, purchase or sale of any non-game bird, game bird, game animal, fresh-water fish or fur-bearing animal, or any part thereof, is restricted or unlawful, the possession, transportation, purchase, or sale of such animal, bird, fresh-water fish, or fur-bearing animal coming from or taken without the State, either belonging to the same or a different species from that native to this State, provided that such bird or animal belongs to the same family as those protected by this Article, shall be deemed to be, and is, unless otherwise expressly provided herein, unlawful. No game bird or game animal, or any part thereof, domestic or imported, shall be sold, offered for sale, purchased, bartered, or served in restaurants, cafes, hotels, boarding houses, dining cars, lunch stands, or any other public eating places at any time except that such places may, during open season, prepare and serve game lawfully taken to persons who have killed such game and are in possession of a valid hunting license; Provided, that reindeer meat may be legally shipped into the State and sold as such under permit from the State Game Commissioner."

It is my opinion that these provisions of the statute are self-explanatory and that it is therefore impossible to comply with the request of the dealer who addressed its inquiry to you.

SECTION 4

MISCELLANEOUS

July 31, 1936.

STATE CONSERVATION DEPARTMENT—POWERS OF AGENTS

Dear Sir:

I am in receipt of your letter of the 2nd instant with reference to your powers as Conservation Agent in the Enforcement of Section 5806, Revised General Statutes, 1920, now Section 8038, Compiled General Laws of Florida, 1927, relating to killing, mutilating or destroying loggerhead or green turtles while laying or found out of the water or upon the beaches of the State during certain months.

In reply your attention is called to Section 7 of Chapter 16,178, Laws of Florida, Acts of 1933, which contain among other things the following:

"The said Conservation Agents shall have full police power and authority in connection with the enforcement of all laws relating to the conservation and protection of wild life in the State of Florida to the same extent as that of the Sheriffs of the State of Florida; and in the performance of their duties, shall exercise such powers as are conferred upon wardens and other officers by the laws hereby transferred to said board for administration."

Your attention is also called to the duties of State or Prosecuting Attorneys in connection with the enforcement of salt water fish laws as enumerated in Section 1278, Revised General Statutes, now Section 1846, Compiled General Laws of Florida, 1927, and I suggest that you consult one of these attorneys with reference to your particular problem of protecting turtles.

July 10, 1936.

SALE OF SHAD FROM NORTHERN WATERS DURING CLOSED
SEASON IN FLORIDA*Dear Sir:*

I am in receipt your letter of the 9th instant referring to Section 1864, Compiled General Laws of Florida, 1927, originally Section 5 of Chapter 10,123, Laws of Florida, Acts of 1925, reading as follows:

"It shall be unlawful for any person, persons, firm or corporation to take, have in his or their possession, buy, sell, offer for sale, or ship or for any express company, railroad or common carrier to transport any fresh or freshly salted shad, or any fresh or freshly salted shad roe from the first day of April until the first day of December of each year."

MISCELLANEOUS

In reply I beg to say that the above statute must be considered in connection with the title of said Act, which reads as follows:

"AN ACT to Protect and Regulate the Salt Water Fishing Industry in the State of Florida, and to Declare Certain Fresh Waters in This State Salt Water for the Purpose of this Act and to Define Certain Waters as Salt Waters."

In consideration of the title to said Act I beg to say that in my opinion it is very doubtful if such statute prohibits the sale of Jack shad and Roe shad caught in northern waters beyond the boundaries of this State.

May 19, 1936.

CRAWFISH—CLOSED SEASON—SHIPMENTS FROM FOREIGN
COUNTRIES

Dear Sir:

I am in receipt of your letter of the 18th instant with attached letter from the Express Superintendent under date of the 15th instant addressed to the local agent, to which is also attached a communication from local agent at Miami, under date of the 14th instant, with attached communication from East Coast Fisheries, Inc., addressed to _____ under date of the 13th instant.

The inquiry which would appear to be presented by the enclosed correspondence is whether or not it is unlawful for a carrier to receive for carriage crawfish or lobster meat shipped from Cuba.

In reply your attention is called to the original Act relating to such subject, Chapter 7909, Laws of Florida, Acts of 1919, which is an Act providing a closed season for salt water crawfish in the waters of the State of Florida. Chapter 8591 of 1921, Chapter 13,618 of 1929 and Chapter 14,702 of 1931, are successive amendatory Acts of the original Act. The Act as amended appears as Sections 8073, 8074, 8074 (1), and 8075, Compiled General Laws of Florida, 1934 Supplement.

Section 8074 appears to make it unlawful for any carrier to receive for carriage any crawfish regardless of where said crawfish may have been caught or taken during the closed season. However, it would appear that the title to the original Act which relates to a closed season for salt water crawfish in the waters of the State of Florida would control over the body of the Act in all successive amendments of the original Act. Under this view it would not appear that it would be unlawful for carriers to receive for carriage crawfish or lobster meat shipped from a foreign country.

MISCELLANEOUS

March 24, 1936.

BOAT LICENSE—TRANSPORTATION OF CRAWFISH FROM THE
BAHAMAS*Dear Sir:*

I have your letter of the 19th instant requesting my opinion with reference to the attached letter addressed to you under date of the 16th instant by the British Vice Consul of Miami.

He states that the Captain of a ship plying between West End Bahamas and West Palm Beach, Florida, reports that he was subjected to a fine or license by the local Conservation Agent for bringing in crawfish from the Bahamas; that he was merely transporting the crawfish and other marine products of the Bahamas consigned to a West Palm Beach fish company. He states that the receipt given to the Master No. 6179, dated March 5, 1936, for \$20.05 indicates it was in payment of "boat license & alien owned boat;" he further states that the Captain of the boat is not engaged in fishing in Florida waters, neither does he sell any fish or other products in this country, but is the master of a British vessel engaged solely in transportation of merchandise between two countries. He further states that no license would appear necessary and requests an investigation by you and if you find the facts, as stated, that you order a refund of the amount paid.

In reply your attention is called to Section 1828, Compiled General Laws of Florida, 1927, requiring a license tax on fishing boats engaged in the fishing industry in the salt waters of the State. Section 1829 of the same compilation requires an additional license tax on fishing boats of non-residents engaged in the fishing industry in this State. Your attention is also called to Section 1832 of the same compilation, reading as follows:

"Payment of this police license and the compliance with the provisions and regulations shall be required of any and all vessels and boats engaged in fishing or freighting fish or otherwise engaged in the fish industry, and all such license tax shall be collected by the shell fish commissioner or his duly authorized deputies."

Article I, Section 8, Clause 3 of the United States Constitution, provides that Congress shall have power to regulate commerce with foreign nations and among the several states and with Indian tribes. The State has no power to present any obstacle to or lay any burden upon interstate commerce, but it has power to adopt regulations respecting the transportation of persons and property even in interstate commerce provided the subject matter is a proper police regulation and there is no conflict with Federal regulations. See 5 R. C. L. 715, Commerce, 27.

MISCELLANEOUS

The boat license tax required by the Florida statutes may properly be considered a police regulation and Section 1832, above quoted, indicates that the Legislature so considered said tax. It must be borne in mind, however, that said Section was passed in connection with other Sections relating to fishing in Florida waters.

If the boat was transporting fish taken from the waters of the State, I think that the State under its police powers would be authorized to charge boat license even though it was a foreign vessel, but if the fish were caught in foreign waters and shipped from a foreign port to this State during the open season in this State and the Master of the ship shows proper evidence of such facts, I do not think the boat would be subject to such license.

As to refunds in such cases, I beg to say I do not know of any provision therefor without a relief act to be passed by the Legislature.

November 22, 1935.

SALT WATER FISH—POSSESSION AND SALE OF FROZEN FISH IN
FREEZING PLANTS DURING CLOSED SEASON

Dear Sir:

I have your letter of the 15th instant enclosing communication from _____ of Jacksonville, Florida, making inquiry if mullet caught and stored in a licensed warehouse on or before December 5th can be moved out of the State during the closed season and if frozen mullet stored during the open season can be offered for sale in Florida during the closed season.

In reply I quote you Section 2 of Chapter 10,123, Laws of Florida, Acts of 1925, now Section 1861, Compiled General Laws of Florida, 1927, as follows:

"It shall be unlawful for any person, persons, firm or corporation to take, have in his or their possession, buy, sell, offer for sale or ship any fresh or freshly salted mullet or mullet roe in this State between the first day of December of any year and the twentieth day of January of the next succeeding year. The possession of any fresh or freshly-salted mullet, or any fresh or freshly-salted mullet roe, by any person, persons, firm or corporation, during the closed season shall be prima facie evidence of the violation of this law: Provided, however, that anyone having any fresh or unsplit mullet, or roe on hand at the beginning of the closed season may have five days in which to dispose of same."

Under the above quoted statute it is my opinion that the inquiry should be answered in the negative.

MISCELLANEOUS

August 20, 1935.

SALT WATER FISH—SHRIMP—IMPORTING BY LOCAL FACTORY

Dear Sir:

I acknowledge receipt of your letter of the 19th, in which you request advice as to whether the Nassau Packing Company, in Nassauville, Florida, may lawfully buy shrimp in St. Marys, Georgia, brought to their Florida factory during closed season on shrimp in Florida.

I beg to state that Laws of Florida do not forbid the importation of shrimp lawfully taken out of the State.

House Bill 122, Chapter 17256 of 1935, which we enclose, you will observe applies to waters of the Gulf of Mexico or its tributaries within the jurisdiction of the State of Florida, and not to the waters of the Atlantic Ocean which touch the Georgia coast.

January 7, 1935.

STATE CONSERVATION DEPARTMENT—OFFICERS ACCEPTING
APPOINTMENT AS U. S. DEPUTY GAME WARDEN*Dear Sir:*

I am in receipt of your letter of the 10th ultimo, reading as follows:

"Please advise the writer if there is any law or any part of the Constitution of the State of Florida which prohibits an officer of the State Conservation Department from accepting and holding an appointment as a U. S. Deputy Game Warden, with or without compensation."

In reply your attention is called to Sections 15 and 17 of Article XVI of the State Constitution, reading as follows:

"Section 15. No person holding or exercising the functions of any office under any foreign Government, under the Government of the United States, or under any other State, shall hold any office of honor or profit under the government of this State; and no persons shall hold, or perform the functions of, more than one office under the government of this State at the same time: Provided, Notaries Public, militia officers, county school officers and Commissioners of Deeds may be elected or appointed to fill any Legislative, executive or judicial office."

"Section 17. No person shall hold any office of trust or profit under the laws of this State without devoting his personal attention to the duties of the same."

MISCELLANEOUS

Your attention is further called to Section 7486, Compiled General Laws of Florida, 1927, reading as follows:

"It shall be unlawful for any officer, State, county or municipal, or any public appointee, or any deputy of any such officer or appointee, to exact or accept any reward, compensation, or other remuneration other than those provided by law, from any person whatsoever for the performance, non-performance or violation of any law, rule or regulation that may be incumbent upon the said officer or appointee to administer, respect, perform, execute or to have executed; Provided, that nothing herein shall be construed so as to preclude a sheriff or his deputies, city marshal or policeman from accepting rewards or remuneration for services performed in apprehending any criminal."

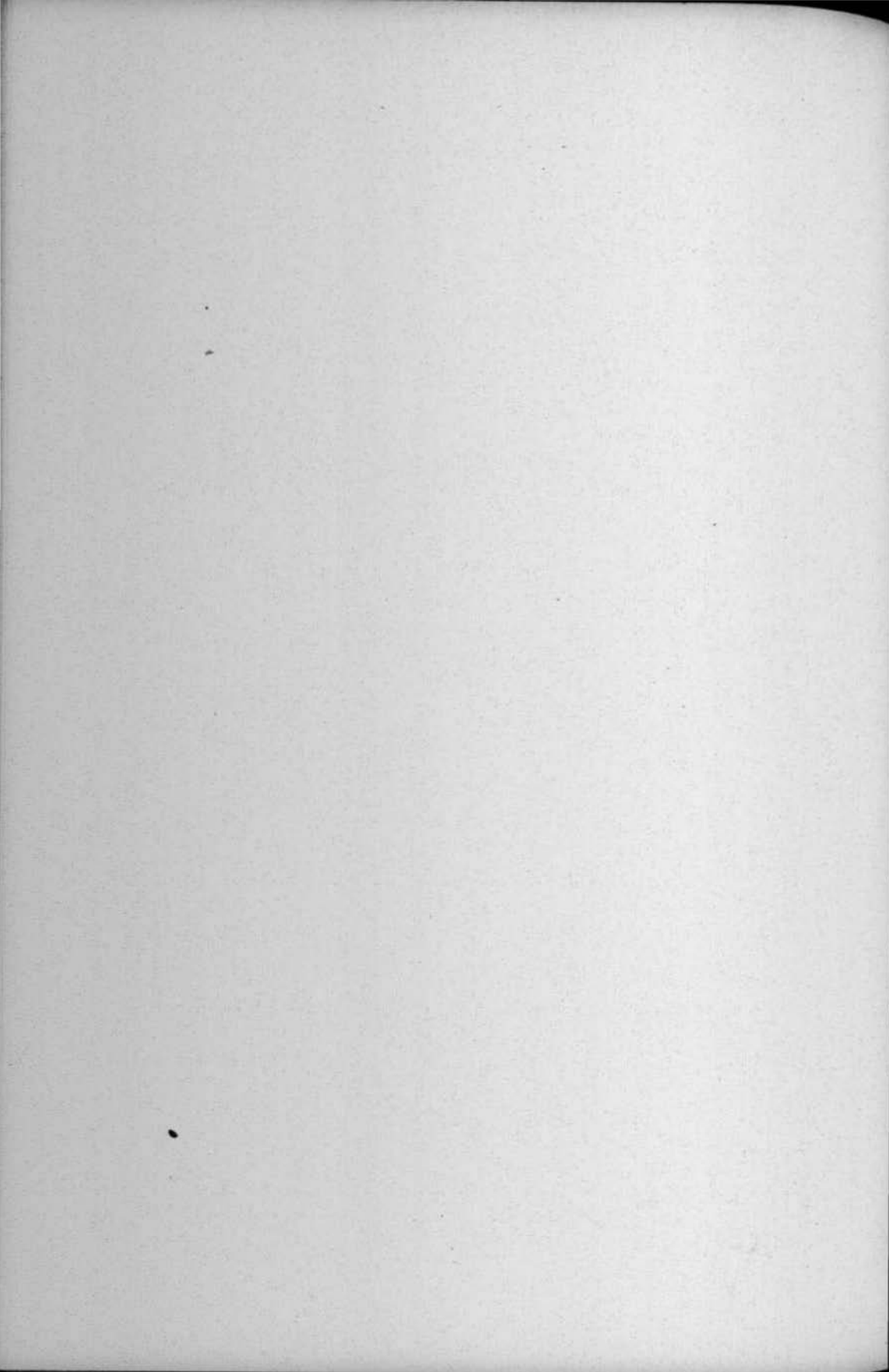
Under the provisions of Chapter 16,178, Laws of Florida, Acts of 1933, the Supervisor of Conservation would appear to be an officer. State Game Wardens and other agents appointed under the provisions of said Act would appear to be employees and not officers. United States Deputy Game Wardens appear to be employees and not officers.

I find no constitutional or statutory prohibitions against an officer of the State Conservation Department or its employees accepting and holding an appointment as United States Deputy Game Warden with or without compensation, but in my view the same would be contrary to public policy. The above quoted constitutional provisions and statute indicate the policy of the State with reference to officers holding more than one office and with reference to acceptance of compensation in addition to the compensation of the office held. It would appear to be contrary to public policy for employees, whose full time is presumed to be taken up in the discharge of the duties of their positions, to accept other appointments or other remunerations for service when officers are prohibited to do so.

CHAPTER XII

COURTS

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COURTS

SECTION 1

INDICTMENTS AND INFORMATION

April 1, 1935.

CRIMINAL PROCEDURE—INFORMATIONS BY STATE ATTORNEY
FOR COUNTY COURT*Dear Sir:*

I am in receipt of your letter of the 25th ultimo, enclosing copy of proposed Act authorizing State Attorneys to file informations for misdemeanors in counties where there is a County Court and providing for docketing the same.

In reply I beg to say I have gone over said bill and find the same to be in very good form. In this connection, however, your attention is called to Section 29 of Article V of the State Constitution, which provides that County Courts in counties where criminal courts are established shall have no criminal jurisdiction. It might be well to add the words "having criminal jurisdiction" after the words "County Court" where it first appears in the title of the Act and after the same words at the end of the first sentence in Section 1.

Aside from the matter of form of the proposed bill your attention is called to Section 18 of Article V of the State Constitution making the Prosecuting Attorney for such County Courts a constitutional officer whose duties are to be prescribed by law and who under Section 8283, Compiled General Laws of Florida, 1927, is given authority to file informations. I am not satisfied in my mind that the Courts would uphold a bill giving State Attorneys the above proposed power since the County Courts have their own prosecuting officers under the Constitution. It might be urged that if such a statute should be legal County Prosecuting Attorneys might also be authorized to draw informations for the Circuit Courts.

These remarks are not to be considered as an opinion from this office but only the statement of some questions which have arisen in my mind in going over the matter and which I thought you might wish to look into before submitting your Bill to the Legislature.

February 4, 1935.

INFORMATIONS FILED DURING COURT VACATION

Dear Sir:

This refers to your favor of January twenty-ninth, wherein you raise the question as to whether or not a State Attorney has the right to file

INDICTMENTS AND INFORMATION

an information during the vacation of the Court in which the information may be filed.

It is my opinion that, taking the entire amendment and construing the entire context, it was the intention of the Legislature to give the State Attorney the power and authority to file an information at any time, during vacation or at any time; and I believe this is the construction placed upon this by the various State Attorneys, and until some Court rules otherwise, I would suggest that you follow this procedure.

SECTION 2

CIRCUIT JUDGES

October 30, 1935.

CIRCUIT JUDGES—OFFICE SUPPLIES—APPROPRIATIONS

Dear Sir:

I have your letter of the 23rd inst., referring to Section 4871, Compiled General Laws of Florida, 1927, providing for the Judge of the Circuit Court at each term of the Court to make written requisition upon the Sheriff for such stationery or other articles as he may deem necessary for the use of the Court which the Sheriff shall secure at the expense of the State. You make inquiry if requisitions for, and the purchase of, letter heads, envelopes and stamps for the Circuit Judges are authorized under said section and if payment therefor may be made under the General Appropriation Act, from the fund appropriated for necessary and regular expenses of the judicial department.

In reply I beg to say in my opinion requisitions are authorized under said Section and may be paid under the General Appropriation Act of 1935 under said fund appropriated for necessary and regular expenses of the judicial department.

September 17, 1935.

SALARIES OF CIRCUIT JUDGES OF THE SIXTH JUDICIAL CIRCUIT

Dear Sir:

In your letter of the 17th instant you request opinion as to whether the Honorable ——— and the Honorable ——— are now entitled to receive compensation as Judges of the Sixth Judicial Circuit for the months of July and August, 1935. You also ask whether the Honorable ——— is entitled to receive compensation as Judge of the Sixth Judicial Circuit.

In the opinion of the Court filed September 12, 1935, in the case of State of Florida ex rel Cary D. Landis, Relator, vs. John U. Bird, Respondent, and John I. Viney, Claimant, the Court held that the Honorable John U. Bird is the constitutional Judge of the Sixth Judicial Circuit and is entitled to hold such office until his successor is duly qualified, and that his successor can only be duly qualified by appointment by the Governor and confirmation by the Senate. This entitles him to his salary as fixed by law for the months of July and August, and continuously thereafter so long as he shall hold the office of constitutional Judge of the Sixth Judicial Circuit.

CIRCUIT JUDGES

The Court also held that the Honorable John I. Viney is an additional Judge of the Sixth Judicial Circuit and may continue in office as such additional Circuit Judge until the end of the term into which he was appointed on August 21, 1934. He is therefore entitled to the salary fixed by law for Circuit Judges for the months of July and August, and continuously thereafter until the end of the term into which he was appointed August 21, 1934, unless he should sooner relinquish the same.

Judge T. Frank Hobson is an additional Judge of the Sixth Judicial Circuit and is entitled to the salary fixed by law for Circuit Judges until his successor is duly qualified or until he relinquishes such office.

The judgment of the Court in the case above referred to was entered on the day the opinion was filed, but will not be certified until the expiration of fifteen days therefrom. Fifteen days is allowed for the filing of petition for rehearing. If no petition or rehearing is filed within that time, then the judgment of the Court will be certified, and that will authorize action thereon.

I suggest, therefore, that the salaries of Judge Bird and Judge Viney be not paid until the judgment of the Court is certified by the Clerk.

May 29, 1935.

OFFICERS' TERM OF OFFICE—COMMISSION FOR UNEXPIRED
TERM—CONSTITUTIONAL CIRCUIT JUDGE, DUVAL
COUNTY, CONSTITUTION, ARTICLE V, SECTION 42

Dear Sir:

This acknowledges receipt of your communication wherein you ask for my opinion as to the date of expiration of the term for which a commission may now be issued for the Constitutional Judge of the Circuit Court of Duval County, provided for by Section 42 of Article V of the Constitution.

In reply thereto, I beg to advise that this additional circuit judge was provided for by the above constitutional provision adopted at the general election in 1912. An examination of the records of the Secretary of State discloses that the first commission was issued December 3, 1912. Under the decisions of our Supreme Court in *State ex rel Hodges vs. Amos*, 133 So. 623, and *State ex rel Davis vs. Collins*, 134 So. 595, the cycle of the terms began December 3, 1912, the term being six years. The commission of Judge Simmons would have expired, and legally so, December 3, 1936. The commission of the present incumbent who was commissioned upon the death of Judge Simmons runs until the end of the present session of the Senate, which was also legally proper.

Any commission issued now should therefore be for the unexpired term and terminate December 3, 1936.

CIRCUIT JUDGES

May 20, 1935.

TERM OF OFFICE OF CIRCUIT JUDGE OF SEVENTH JUDICIAL
CIRCUIT*Dear Sir:*

Complying with your oral request for my opinion as to expiration of term of office of the Circuit Judge of the Seventh Judicial Circuit of Florida, I would state that it is my opinion that the term of office of the Circuit Judge is determined by the six year cycles beginning with the first date when the office was filled. I am basing this opinion on the decision of the Supreme Court of Florida in the case of the State of Florida vs. Amos, 101 Fla. page 114, the same case being reported in 133 So. page 623. You will note that the first head-note of the decision reads as follows:

"Unless otherwise duly provided, where an office is created the term begins when the office is first filled."

This opinion in effect holds that subsequent terms begin and expire on like dates and for like periods as the first legal term, thus continuing a regular cycle unless changed by law. The term of office of the Circuit Judge of the Seventh Judicial Circuit under the present Constitution began May 5th, 1887. Figuring the various terms of office since that time at six year cycles, the present term would expire May 5th, 1935. It is my opinion that the cycle of the term of office computing from the time when the office was first filled controls the termination of the term of office rather than the Commission.

June 13, 1935.

CIRCUIT JUDGES, COMMISSION

Dear Sir:

Replying to your letter of the 12th instant, I beg to advise that under the provisions of Section 14 of Article XVI of the Constitution of Florida, you will continue in office after the expiration of your Commission as Judge of the Sixteenth Judicial Circuit, until the effective date of your new Commission, unless, of course, a new Commission should be issued to you for the old Sixteenth Circuit, which I assume will not be done.

SECTION 3

STATE ATTORNEYS

July 31, 1935.

SALARIES OF STATE ATTORNEYS AND ASSISTANT STATE
ATTORNEYS*Dear Sir:*

I have your letter of the 17th instant, transmitting your analysis of Senate Bill No. 4 of 1935, relating to the re-districting of Circuit Courts, showing the number of Circuit Judges, State Attorneys and Assistant State Attorneys for each Circuit, together with the salary of each, and making inquiry as to the correctness of such statement.

In reply I beg to say that said statement appears to show correctly the number of Circuit Judges, State Attorneys and Assistant State Attorneys, as well as the salary of Circuit Judges.

With reference to the salaries of Assistant State Attorneys, I find that your statement appears to be correct for all Circuits except Circuit Number Four. Your statement shows the salary for the Assistant State Attorney in said Circuit to be \$4500.00, which is in line with Chapter 17,264, Acts of 1935, which was signed and became effective on May 31, 1935. You will note however, that the salary of this Assistant State Attorney is fixed at \$3,000.00 under the provisions of Chapter 16,784 of 1935, approved June 1, 1935. It, therefore, appears that Chapter 16,784 supersedes Chapter 17,264 as to this particular Circuit and that \$3,000.00 instead of \$4,500.00 is the salary authorized by law for the Assistant State Attorney.

Your statement of salaries of State Attorneys appears to be correct as to all Circuits except the Sixth, Tenth, Thirteenth and Fourteenth Circuits.

As to the Sixth Circuit your statement shows a salary of \$4500.00 for the State Attorney. The salary in this Circuit for the State Attorney appears to be governed by Chapter 15,859, Acts of 1935, under which the correct amount would be \$3,000.00.

As to the tenth Circuit your statement shows a salary of \$4800.00 for the State Attorney. Chapter 15,859 of 1935 appears to govern in this Circuit and the correct amount appears to be \$4,500.00.

As to the Thirteenth Circuit your statement shows a salary of \$4800.00 for the State Attorney. The salary of such officer in this Circuit appears to be governed by Chapter 15,859 of 1935 and the correct amount appears to be \$4500.00.

As to the Fourteenth Circuit your statement shows the salary of the State Attorney to be \$4500.00, which is in line with Chapter 17,263, Acts

STATE ATTORNEYS

of 1935, signed and effective on June 7, 1935. You will note, however, that Chapter 17,262 of 1935 was signed and effective on the same date and that the salary for State Attorney in this Circuit is fixed under said Act at \$4800.00. Since both Acts were signed and effective on the same date, it is my opinion that the State Attorney in this Circuit is entitled to receive the sum of \$4800.00 per annum.

The above opinion applies to the new set-up under the 1935 re-districting act and to salaries under such new set-up. The salaries of officers holding over under Section 45 of Article 5 of the State Constitution will be the same as heretofore under the old set-up unless salary statutes of 1935 when applied to Circuits under the old set-up should alter the same.

August 12, 1935.

SALARIES OF STATE ATTORNEYS AND ASSISTANT STATE ATTORNEYS

Dear Sir:

After further and more mature consideration I wish to correct my letter to you under date of the 31st ultimo, relating to salaries of State Attorneys and Assistant State Attorneys and to say in my opinion the salary of the State Attorney of the Sixth Judicial Circuit should be \$4500.00 instead of \$3,000.00.

September 20, 1935.

SALARIES—STATE ATTORNEYS AND ASSISTANT STATE ATTORNEYS

Dear Sir:

On July 31, 1935, I wrote you with reference to salaries of State Attorneys and Assistant State Attorneys. The third paragraph of said letter reads as follows:

"With reference to the salaries of Assistant State Attorneys, I find that your statement appears to be correct for all Circuits except Circuit Number Four. Your statement shows the salary for the Assistant State Attorney in said Circuit to be \$45.00.00, which is in line with Chapter 17,264, Acts of 1935, which was signed and became effective on May 31, 1935. You will note, however, that the salary of this Assistant State Attorney is fixed at \$3,000.00 under the provisions of Chapter 16,784 of 1935, approved June 1, 1935. It therefore, appears that Chapter 16,784 supersedes Chapter 17,264 as to this particular Circuit and that

\$3,000.00 instead of \$4,500.00 is the salary authorized by law for the Assistant State Attorney."

The decision of our Supreme Court in the case of *State ex rel. vs. Bird* was to the effect that the purpose of Senate Bill No. 4, Chapter 17,085, Acts of 1935, redistricting Judicial Circuits was to reapportion and reduce the number of Circuits. It, therefore, appears that Circuits in existence under prior laws, which were left undisturbed under said redistricting act, were not creations of said Chapter 17,065, but were merely continued as formerly existing. By reference to the title of Chapter 16,784, Acts of 1935, relating to Assistant State Attorneys, you will note that said Act applies only to Assistant State Attorneys in those Judicial Circuits created under the provisions of Section 45 of Article V of the State Constitution. The Fourth Judicial Circuit does not appear to have been created under said constitutional provision, but was continued under Chapter 17085, as formerly created under prior statutes. I find also that the present State Attorney in the Fourth Judicial Circuit holds his office under prior statutes and under commission issued prior to the adoption of said constitutional amendment.

In view of the above I wish to correct the third paragraph of my letter to you under date of July 31, 1935, above quoted, and to say in my opinion Chapter 16,784, Acts of 1935, does not supersede Chapter 17,264, Acts of 1935, with reference to the present Assistant State Attorney of the Fourth Judicial Circuit and that under the provisions of said last mentioned statute his salary is \$4500.00 per annum instead of \$3,000.00 per annum.

October 25, 1935.

ASSISTANT STATE ATTORNEYS—TRAVELING EXPENSE

Dear Sir:

I have your letter of the 22nd inst., making inquiry if Assistant State Attorneys are entitled to reimbursement for actual and necessary expenses incurred by them in counties other than those in which they reside.

In reply I beg to say that under the reasoning and decision of our Supreme Court in the case of *State ex rel. Parker v. Lee*, 113 Fla. 40, 151 So. 491, construing the general appropriation act, Chapter 15,858 of 1933, with reference to expenses of State Attorneys, it is my opinion that the appropriation for "necessary and regular expenses" under the heading of "Judicial Department" in the general appropriation act of 1935, Chapter 16,772, covers necessary and regular expenses of Assistant State Attorneys incurred in the discharge of their official duties in counties other than those in which they reside.

STATE ATTORNEYS

November 26, 1935.

STATE ATTORNEYS—PAYMENT OF OFFICE RENTAL AND
STENOGRAPHERS' SALARY—CHAPTER 17264,
ACTS OF 1935*Dear Sir:*

This acknowledges your communication of November 13, 1935, wherein you inquire whether or not a State Attorney is entitled to receive money from the State to pay rental for their offices or salaries for their stenographers.

You mention the above Act, but the question of the repeal of any prior acts thereby is not involved as I see the question you propound.

It is my opinion that, absent any special statute, (see for example Chapter 17261, Acts of 1935), there is no authority for the State to pay out of State moneys office expenses or rental or salaries of stenographers for a State Attorney. Such special acts in most instances, as the one last mentioned, provide for payment by the County and not by the State.

December 20, 1935.

SALARIES OF STATE ATTORNEYS—OLD 17TH CIRCUIT

Dear Sir:

This acknowledges your communication of December 10, 1935, with which you enclose letter from Hon. ———, former State Attorney of the 17th Judicial Circuit, and various correspondence relative to the matter treated in his letter.

You request my opinion as to whether or not, since the decision of the Supreme Court of Florida, in the case of State of Florida, ex rel., H. F. Mohr, against J. M. Lee, as Comptroller, I am of the view that Mr. ——— would be entitled to receive additional salary as stated in his letter.

The correspondence submitted discloses that Mr. ——— was State Attorney of said circuit from the 10th of June, 1927, to the 24th of June, 1931; that according to the Federal Census of April 1, 1930, this circuit was shown to have a population in excess of sixty thousand. I am, therefore, of the opinion that from April 1, 1930, until the expiration of his term of office, Mr. ——— became and was entitled to receive additional compensation in such amount as to place him, for such period of time, on the salary basis of \$5400 per annum, as provided by Chapter 12275, Acts of 1927, in the light of the decision of the Supreme Court in the case above referred to, which was decided December 3, 1935.

STATE ATTORNEYS

While there are some factual differences between the situation there presented and the situation with respect to Mr. ———, I am of the opinion that these differences are distinctions without a real difference. I, therefore, answer your inquiry in the affirmative. However, your computation as to the additional salary should be for the period of time between the date of the 1930 Federal Census and the date of expiration of Mr. ——— term.

January 9, 1936.

ASSISTANT STATE ATTORNEYS—RESIDENCE—COUNTY
PROSECUTING ATTORNEY—POWER OF COUNTY
COMMISSIONERS

Dear Sir:

I have your letter of the 1st instant making two inquiries as follows:

(1) Can the Board of County Commissioners of Nassau County dispense with the services of County Prosecuting Attorney for the County Judge's Court of Nassau County? Has the board authority to pay said Prosecuting attorney whatever salary or fees that they deem proper?

(2) Assuming that the State Democratic Executive Committee decides to place the Assistant State Attorney for the Fourth Judicial Circuit in the June Primary, please advise whether or not, under existing law, a qualified elector of Duval County, would be eligible for the appointment if he received the nomination?"

In reply to your first inquiry I quote you Sections 2155 and 2156, Compiled General Laws of Florida, 1927, which appear to be the only statutes on the subject of your inquiry. The language of these statutes is so clear that no special construction appears necessary. They read as follows:

2155. "The board of county commissioners of the several and respective counties of the State of Florida wherein there shall be no county court or criminal court of record or court of record for the trial of criminal causes are hereby empowered and required to employ an attorney at law to prosecute all persons, firms and corporations, charged with the commission of any kind of offense against the laws of the State in or before the county judge's court."

2156. "The compensation of the attorney so employed by the county commissioners as provided by section 2155 shall be not less than three hundred dollars or more than six hundred dollars per annum, payable monthly, and in addition thereto said attorney shall be entitled to and shall receive the same fees for conviction as are now or may hereafter

STATE ATTORNEYS

be provided by law for attorneys in county courts as conviction fees in cases prosecuted before county court. Said conviction fees to be taxed as part of the cost in each case in which such conviction shall be had before the court of the county judge. Said compensation and fees shall be payable out of the fine and forfeiture fund of the county."

Answering your second inquiry it appears that Chapter 16,784, Laws of Florida, Acts of 1935, is the statute controlling in such matter. Said Act provides for the appointment of Assistant State Attorneys in the Judicial Circuits of the State and Section 2 of said Act contains the following language:

" * * * and in the Fourth Judicial Circuit either the State Attorney or the Assistant State Attorney shall reside in Nassau County or Clay County. * * *"

You will note that the above language contains nothing with reference to residence before or at the time of appointment but only provides that the State Attorney or the Assistant State Attorney shall reside in Nassau County or Clay County. It would, therefore, appear that appointments could be made from any County in the Circuit but after appointment their residence should conform to the statute.

January 18, 1935.

STATE ATTORNEYS—EXPENSES—COURT REPORTER'S FEE FOR
TAKING TESTIMONY

Dear Sir:

I am in receipt of your letter of the 3rd instant, enclosing bill from Hon. _____, State Attorney, in the sum of \$68.02, which includes an item of \$6.47 for transcript of testimony in a case, which, as shown by the affidavit of the State Attorney attached, was incurred for the purpose of having the testimony of the defendant in said case for use at the next trial of said defendant with the purpose in view of impeaching his testimony at the next trial in the event it should be different from the testimony given by him at his former trial, and that said transcript of testimony was not in the nature of stenographic services but more in the nature of documentary evidence for use at the subsequent trial and was of no benefit to the State Attorney except for official use.

You make inquiry if the above mentioned item of \$6.47 is a legitimate expense charge and should be paid by the State of Florida.

In reply I beg to say that in consideration of the above mentioned affidavit accompanying said bill for expenses and in view of the decision of our Supreme Court in the case of *State ex rel. Parker vs. Lee*, 151 So.

STATE ATTORNEYS

491, it is my opinion that said item of \$6.47 is a legitimate expense and should be paid by the State of Florida.

Enclosed find all papers attached to your letter returned herewith.

July 5, 1935.

HOUSE BILL NO. 1479, CHAPTER 16784, ACTS OF 1935, STATE
ATTORNEYS, ASSISTANTS

Dear Sir:

At your request I shall give you my construction of the statute applicable to the appointment of an Assistant State Attorney for the Fourth Judicial Circuit, and the tenure of his office, and also as to whether such Assistant State Attorney will have to be re-appointed and re-commissioned under House Bill No. 1479.

I have had some difficulty in reaching a definite conclusion as to the applicable provisions of law in this respect, but after giving careful consideration to the subject, I have reached the following conclusions:

- (a) There can be only one Assistant State Attorney for the Fourth Judicial Circuit.
- (b) House Bill 1479 does not provide for the appointment by Governor of an Assistant State Attorney for the Fourth Circuit, nor fix his term of office, nor his compensation.
- (c) The Assistant State Attorney for the Fourth Judicial Circuit is appointive by the Governor under Chapter 11830, Acts of 1927, as amended by Chapter 15859, Acts of 1933, which is still in existence, except as to salary.
- (d) The salary of the Assistant State Attorney of the Fourth Judicial Circuit is fixed by Senate Bill No. 920 or Chapter 17264, Acts of 1935, at \$4,500.00.

Referring to Section 1 of House Bill 1479, it is observed that in all judicial circuits having not more than seven counties, there shall be appointed one State Attorney, but it is not stated by whom this appointment is to be made. However, this is provided for in Sections 3 and 5 of the Act, as to all circuits other than the Fourth Section 3 provides that in all circuits having a population of less than 190,000, according to the last State census, it shall be the duty of the Governor, by and with the consent of the Senate, to appoint Assistant State Attorneys. This does not fit the Fourth Circuit, because its population, according to the last State census, exceeds 190,000.

Section 5 provides that in all judicial circuits having a total population of more than 190,000, according to the last State census, and having

STATE ATTORNEYS

four Circuit Judges, and wherein one of the counties of said circuit shall have a total population of 180,000, according to the last State census, the Governor shall appoint two Assistant State Attorneys. This does not fit the Fourth Circuit, because it has no county the population of which is more than 180,000, according to the last State census.

It appears, therefore, that provision was made in House Bill 1479 for the appointment, tenure of office, powers and duties, and compensation of Assistant State Attorneys in all circuits except the Fourth.

Senate Bill 920 or Chapter 17264 fixes the salary of Assistant State Attorneys in all circuits having a population of more than 175,000, at \$4,500.00 per annum.

Chapter 10267, Acts of 1925, as amended by Chapter 15859, Acts of 1933, does not now fit the Fourth Circuit, because the Fourth Circuit has more than three Circuit Judges.

Chapter 11830, Acts of 1927, as amended by Chapter 15859, Acts of 1933, the same being Section 4759 C. G. L. Supplement, does fit the Fourth Judicial Circuit, except as to salary, because that circuit has more than 100,000 population, according to the last preceding State or Federal census, and has two or more circuit judges. The provisions of the Act are not in conflict with the provisions of House Bill No. 1479, because there was no provision made in House Bill 1479 as to the Fourth Circuit. Therefore, Section 7 of House Bill 1479 does not repeal Section 4759 C. G. L. Supplement.

Section 4759 C. G. L. Supplement provides that the term of office of the Assistant State Attorneys appointed thereunder shall expire with that of the State Attorney of the circuit.

It is my opinion that the Assistant State Attorney for the Fourth Judicial Circuit must and does hold under Section 4759 C. G. L. Supplement, and since his term of office expires with that of the State Attorney of the circuit, there is not now a vacancy in said office to be filled, and that he is not required to be re-appointed or re-commissioned until the expiration of the term of office of the State Attorney for said circuit.

This expresses my opinion fully on the applicable provisions of law in relation to the question stated.

January 5, 1935.

STATE ATTORNEYS, COMMISSIONS ON COLLECTIONS

Dear Sir:

I have your inquiry as to whether the commission of 10% allowed to State Attorneys on monies collected by him on account of any claim

STATE ATTORNEYS

prosecuted or compromised by him under the provisions of Section 4767, Compiled General Laws of Florida, 1927, has been affected by Chapter 15,859, Laws of Florida, Acts of 1933, fixing the salaries of State Attorneys and other officers.

In reply your attention is called to Section 4739, Compiled General Laws of Florida, 1927, which makes it the duty of the State Attorney to prosecute or defend on behalf of the State all suits in which the State is a party. This Section you will note requires certain duties without providing for any compensation therefor in said section.

Your attention is further called to the following paragraph immediately following the stipulation of salaries to State Attorneys in Section 1 of Chapter 15,859, Laws of Florida, Acts of 1933:

"The above amount so fixed shall be the only compensation to be allowed for all services rendered by State Attorneys."

In view of the fact that State Attorneys are required to represent the State in suits and in view of the above quoted paragraph limiting their compensation to the salaries stipulated in Chapter 15,859, it appears that State Attorneys are now precluded from charging the commission under Section 4767 for the collection of monies by him or paid by him into the Treasury on account of claims prosecuted or compromised by him.

May 21, 1935.

SUPREME COURT—REBINDING OF REPORTS IN HANDS OF STATE ATTORNEY

Dear Sir:

I am in receipt of your letter of the 7th instant, enclosing copy of your letter of the same date to the Governor, in which you state the binding on a number of volumes of the Supreme Court Reports furnished you, as State Attorney, are very much in need of repair and making inquiry if there is any provision or way in which the State of Florida will pay for repairing or rebinding said volumes.

In reply I regret to say that I know of no law or provision to take care of such situations. I also regret that the work of this office has precluded an earlier reply to your inquiry.

SECTION 4

PROBATE ACT OF 1933 (Chapter 16,103)

August 2, 1935.

PROBATE ACT—BOND OF CURATOR

Dear Sir:

I have your letter of the 22nd ultimo enclosing a communication from ———, Trust Officer of Union Trust Company, St. Petersburg, Florida, making inquiry as to the authority of his bank to act without bond as a curator of an estate under the Probate Act.

Chapter 16,103, Laws of Florida, Acts of 1933, is the original Probate Act. Section 58 of said Act, relating to curators, was amended by Senate Bill No. 128, Chapter 17171, of 1935. I quote you that part of Section 58, as so amended, which relates to bond of curators, as follows:

"Such bond shall be required of the curator as the County Judge shall deem necessary to secure the property, or proceeds in case of sale, and the County Judge may make an order for the sale of such portion of the property as should be sold; provided, however, that no such bond shall be required of banks and trust companies as curators."

From the foregoing you will note the proviso to the effect that no such bond shall be required of banks and trust companies as curators.

May 6, 1935.

COURTS—PROBATE MATTERS, ESCHEATS

Dear Sir:

Under the laws of Florida, the property of intestates who leave no heirs surviving them, escheats to the State and goes into the State Treasury, and ultimately into the School Fund. Persons claiming such estates as heirs may prove their heirship, as to which the statute fixes no limitation.

SECTION 5

MISCELLANEOUS

November 20, 1935.

COURTS—EFFECT OF ORDER FOR SALE OF TAX CERTIFICATE

Dear Sir:

I have your letter of November 13, to which is attached a copy of the peremptory writ of mandamus and other court papers in the case of State ex rel. W. J. Peacock vs. J. A. Peacock, Clerk of the Circuit Court of Calhoun County, Florida, in which the Court directed the Clerk to sell immediately and assign to the petitioner a tax sale certificate on certain lands in Calhoun County.

The Respondent's defense to the mandamus action was that Chapter 17406, Laws of Florida, Acts of 1935, being House Bill 163, prohibited the sale and transfer of tax sale certificates owned by the State.

You request me to advise you whether or not the peremptory writ of mandamus in this case requires the Clerk to disregard entirely the provisions of Chapter 17406, *supra*.

The peremptory writ is confined, of course, to the particular tax sale certificate described therein; however, since the Circuit Court granted the writ, it is to be presumed that it will continue to grant writs of a similar nature and will continue to hold Chapter 17406 to be void and in conflict with certain provisions of the State Constitution. It is my opinion that Mr. Peacock may, upon authority of the writ in this case, proceed to sell and assign tax sale certificates owned by the State in the same manner and to the same extent as if Chapter 17406, *supra*, had not been passed by the Legislature. In other words, insofar as Calhoun County is concerned, the Clerk may operate on the theory that Chapter 17406 has been declared invalid and is not binding upon him.

December 10, 1935.

COURTS—STATE AND COUNTY OFFICERS NOT PROHIBITED FROM
RECEIVING WITNESS FEES AND MILEAGE*Dear Sir:*

This is in reply to your letter of December 7.

I do not know of any statute prohibiting the payment of witness' fees and mileage to state or county officers or employees when subpoenaed as witnesses in a case.

MISCELLANEOUS

September 5, 1935.

FEES AND MILEAGE OF WITNESSES IN CRIMINAL CASES

Dear Sir:

I beg to acknowledge receipt of your letter of August thirtieth, requesting my opinion as to whether or not witnesses should be paid for attendance on the Circuit Court of Manatee County at the rate of one dollar per day and five cents per mile, in accordance with the payroll which has been transmitted to your office.

Section 4379 of the Compiled General Laws of Florida provides that witnesses in all criminal cases in the circuit courts shall receive for each day's actual attendance two dollars, and also five cents per mile for each mile which has been actually travelled to and from the court. This statute, in my opinion, controls the pay to be received by the witnesses in attendance upon criminal causes in the circuit courts, including witnesses subpoenaed to appear before the State Attorney, as stated in my letter to the Honorable L. Grady Burton, State Attorney at Wauchula, Florida, under date of December 21, 1934, a portion of which you quoted in your letter.

September 5, 1935.

CRIMINAL PROCEDURE—RE-ARREST FOR FAILURE TO COMPLY
WITH FINE AND COST BOND*Dear Sir:*

Your letter of August 21, 1935, to the Honorable ———, now a Justice of the Supreme Court, has been transmitted to me for attention in his letter of September fourth. The delay in your letter reaching me was occasioned by the vacation of the Court.

I note that you desire the opinion of the Attorney General's Office as to what manner of process is necessary to apprehend a defendant after he has made a fine and cost bond, after conviction and sentence for a criminal offense.

It is my opinion that the fine and cost bond, authorized to be given after a sentence by Section 8426, Compiled General Laws of Florida, when given and approved, operates as a stay of execution of the judgment of conviction just as does a supersedeas bond in a criminal case, cases, authorized by 8472, Compiled General Laws of Florida. Upon failure to comply with the terms of the bond in either case, the Court which pronounces the judgment of conviction should issue a *capias* for the re-arrest of the defendant, and a commitment to the prison to which he had been sentenced. In other words, the same procedure should be

MISCELLANEOUS

had against the defendant for failure to comply with the fine and cost bond, as that which is taken against a defendant who has given a supersedeas bond after conviction, when the bond is estreated or forfeited for failure of the defendant to comply with the terms thereof.

May I suggest that you consult your local county solicitor or State Attorney for any further advice you may need in this matter.

August 20, 1935.

CORONER'S INQUEST—FEES OF COURT REPORTER PAID BY
COUNTY

Dear Sir:

I have your letter of the 19th inst., enclosing letter of _____, Clerk of the Circuit Court of Broward County, dated August 14, enclosing and submitting to you bill of _____, Court Reporter, covering services rendered in the Coroner's Inquest of Broward County, Florida.

In reply to your inquiry as to whether or not the bill enclosed is an item that is to be paid by the State, I quote a part of Section 2840, Compiled General Laws, which reads as follows:

"All costs and fees arising from the coroner's inquest shall be a charge upon the county where the inquest is held and be payable from the General Revenue Fund of the county."

September 2, 1936.

BAILIFFS—PAYMENT FOR MEALS WHEN ACCOMPANYING JURY

Dear Sir:

This is in reply to your oral request for my opinion as to whether or not there is any legal authority for the payment of meals of bailiffs who were directed by the Court to remain with the jury constantly.

This question was passed upon by the Supreme Court of Florida in the case of County of Nassau vs. Downie, reported in 16 Fla. at page 171. The following is from the opinion of the Court:

First. As to the matter of the board of bailiffs.

"Under Chapter 1981, page 36, Acts of 1874, the law controlling the subject, the sheriff is allowed 'for actual and necessary expenses incurred in the arrest, safekeeping or punishment of prisoners or criminals, such allowance as either the judge or the justice from whose court the process issues, shall "deem

MISCELLANEOUS

just; *provided, however*, that there shall not be allowed for bailiffs more than one dollar per day.' As we show in the subsequent portion of this opinion, this is the only statute then controlling the subject, the act of 1825, chapter 45, page 118, Acts, having, in so far as this matter is concerned, been repealed by chapter 1815, and not revived by chapter 1861. Under this act it is contemplated that the bailiff will board himself. The sheriff, as the representative of the county or State, (it is unnecessary to decide which,) is authorized to employ a bailiff at a stated price. The expense of the board of this bailiff is a necessary expense of his own. It is no more an expense of the court, contingent or otherwise, within the meaning of the statute, than is the board of the sheriff or clerk. The sheriff is authorized to incur expense for the per diem of a bailiff; he is not authorized to pay a per diem and his board. This is a charge not authorized by law, and no officer can bind either the State or county, except where there is authority, either expressed or necessarily implied, given by law to make the contract sought to be enforced."

Since the decision above referred to, there does not appear to have been enacted any statute specifically authorizing the payment of the meals of bailiffs. There is no way of evading the conclusion, harsh as it may seem, that such a charge is not authorized at law. I find upon investigation that the Comptroller's office has uniformly declined to recognize such a charge as proper.

August 3, 1935.

COURTS—INTERPRETERS

Dear Sir:

I am in receipt of your letter of the 29th ultimo, making inquiry if we have official interpreters to serve the Courts of this State.

In reply I beg to say our statutes do not provide for official interpreters before the Courts. However, our Supreme Court holds the interpretation of testimony is proper to be resorted to whenever the necessity exists. I refer you to the case of *Kelly v. State*, 96 Fla. 348, 118 So. 1, and quote you headnotes 2, 4 and 5 therefrom, as follows:

"Whenever the witness' natural mode of expression is not intelligible to the tribunal, interpretation is necessary; and whether such need exists is to be determined by the trial court.

"What sort of a person is a proper one to act as an interpreter of the testimony of a witness is a question depending much on the circumstances, and should be determined by the

MISCELLANEOUS

trial judge, to the end that there shall be an intelligible transmission of the evidence to the jury through a medium as capable, unbiased, and faithful as it is practicable to obtain.

"An interpreter of the testimony of a witness should be required to take an oath to interpret truly to the court and jury the testimony of such witness."

November 7, 1936.

COURT REPORTER FOR CIVIL COURT OF RECORD

Dear Sir:

I acknowledge receipt of your letter of the 5th instant, enclosing letter to you dated November 2, 1936, from Mr. _____, attorney, of Miami, Florida, with relation to the appointment of an official court reporter for the Civil Court of Record of Dade County.

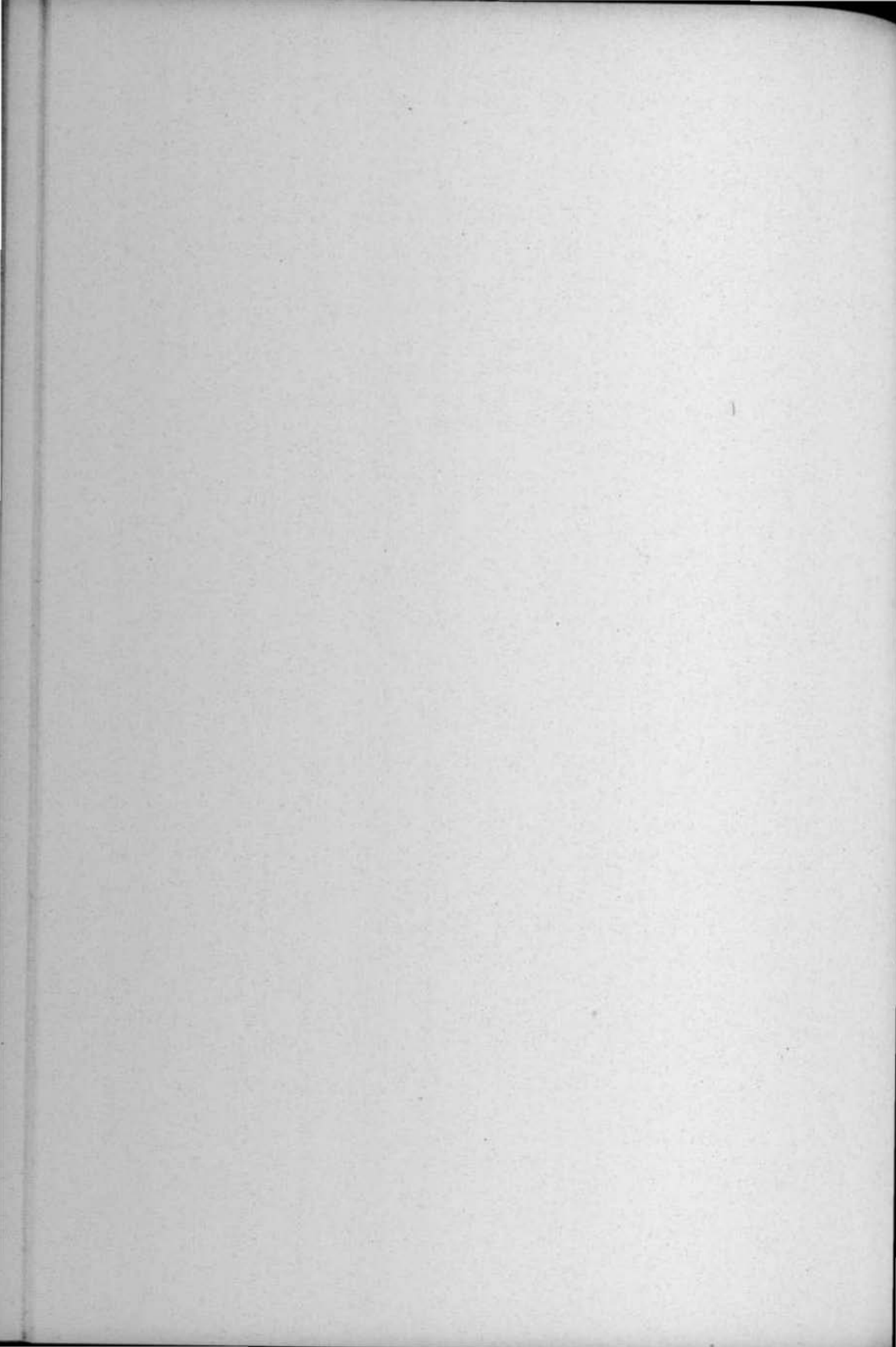
The act creating civil courts of record in the State, does not specifically provide for the appointment of official court reporters therefor. However, Section 10 of Chapter 11357, Acts of 1925, provides that the General Statutes of Florida and all laws amendatory thereof or supplementary thereto, which can be applied to such civil courts of record, or to any proceedings therein, or to any officer thereof, shall be made applicable to the civil courts of record in all cases except where they are inconsistent with the provisions of Chapter 11357. This provision has evidently been construed to authorize the appointment of official court reporters for the civil courts of record, in view of the fact that such appointments have been made since the year 1927.

If the section referred to, is authority for the appointment of official court reporters for the civil courts of record, then such appointments should be made in the same manner as official court reporters are appointed for the circuit courts, that is to say, they may be appointed when the presiding judge shall deem it necessary, such reporters to be efficient and experienced in reporting judicial proceedings, the appointment to be made upon the recommendation of the judge of the court for which the appointment is made.

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MISCELLANEOUS

SECTION 1

BUILDING AND LOAN ASSOCIATION

NO CORRESPONDENCE

SECTION 2

CITIES AND TOWNS

August 9, 1935.

CHAPTER 17572 OF 1935—POWER OF GOVERNOR TO SUSPEND OFFICERS OF CITY OF KEY WEST

Dear Sir:

Complying with your request for an opinion as to whether Chapter 17572, Acts of 1935, conferred upon the Governor of the State exclusive power to remove all city officers of the City of Key West, and whether said Act repeals Section 5, Chapter 8290, Acts of 1919, as amended by Chapter 11577, Extraordinary Session, 1925, I beg to state that in my opinion the acts referred to should be construed in para materia.

Section 1, Special Acts of 1925, amending the Special Act of 1919, referred to above, defines the powers of the Mayor of the City of Key West, and reads as follows:

"He shall have power to dismiss any appointive police officer at any time, and said dismissal shall be final.

"He shall, for good cause, have the right to suspend any other officer of said city, except members of the City Council; Provided, that at the next meeting of the City Council, after such suspension, the Mayor shall submit to the City Council, in writing, the cause of such suspension, whereupon such City Council, upon due notice given to the accused, shall inquire into the cause of such suspension. If two-thirds of said Council present shall sustain the charges preferred by the Mayor, the officer shall stand dismissed.

"The Mayor shall have the right to appoint some person to perform the duties of said suspended officer until the Council shall have passed on such suspension."

Section 1 of the Act of 1935, in question, reads as follows:

"Section 1. That until December 31, 1936, the Governor of the State of Florida shall have the right, power and authority

CITIES AND TOWNS

in his discretion to remove from office, with or without cause, any or all of the officers, elective or appointive, of the City of Key West, a municipal corporation organized and existing under the Laws of the State of Florida."

Section 2 of the Act repeals all laws, general, local or special, to the extent of their conflict.

It is clear from reading both acts that the power of suspension from office given the Mayor does not conflict with the power of removal from office given to the Governor in the later Act. Our Supreme Court has held that laws should be construed with reference to the Constitution and the purpose designed to be accomplished and in connection with other laws in para materia, though they contain no reference to each other. *CURRY vs. LEHMAN*, 55 FLA 847, 47 SO 18; *LOFTIN vs McMILLAN*, 55 FLA 254, 45 SO 882. The above cases were cited, and parts thereof quoted, in *STATE vs JOHNSON*, 71 FLA 363, 72 SO 477, wherein the Court held that where one statute in comprehensive terms covers a subject, and another later statute embraces only a particular part of the same subject, the two should be construed together, unless a definite legislative intent appears, and the statute relating to the particular part of the general subject will operate as an exception to or qualification of the general terms of the more comprehensive statute, to the extent only, of the repugnance, if any.

Taking the whole statute, above referred to, enacted at the Special Session of the Legislature of 1925, together with the later act passed upon the same subject, giving the power to the Governor to remove any and all municipal officers of the City of Key West, we must arrive at the conclusion that the 1935 Act conferred upon the Governor an additional field of operation without destroying the power of the Mayor to suspend from office. It can hardly be said that the Legislature intended, by the passage of the 1935 Act, that the Governor of the State, residing in Tallahassee, should be burdened with the duty of enforcing discipline in the police department of the City, but a more reasonable construction would be that this field of operation was intended to be left to the Mayor of the City, upon whom is placed the duty of enforcing all of the City Ordinances.

The Supreme Court of Florida has said in the case of *STATE vs JOHNSON*, *supra*:

"It is to be presumed that different acts on the same subject, passed at the same session of the Legislature, are imbued with the same spirit and actuated by the same policy, and they should be construed each in the light of the other. The legal presumption is that the Legislature did not intend to keep really contradictory enactments in the statute book, or to effect so important a measure as the repeal of a law without expressing an

CITIES AND TOWNS

intent to do so. An interpretation leading to such a result should not be adopted unless it is inevitable. The rule of construction in such cases is that if courts can, by any fair, strict, or liberal construction, find for the two provisions a reasonable field of operation, without destroying their evident intent and meaning, preserving the force of both, and construing them together in harmony with the whole course of legislation, it is their duty to do so."

It is my opinion that both acts have ample fields of operation of their own and that the Act conferring upon the Governor the power to remove any and all municipal officers of the City of Key West is not in conflict with the former Act insofar as it empowers the Mayor of said City to dismiss a police officer, to suspend any other officer of the City, except the members of the City Council, and to appoint persons to perform the duties of the suspended officers during their suspension.

May 21, 1935.

MUNICIPALITIES, SPECIAL OR LOCAL LAWS

Dear Sir:

I have read and carefully considered the copy of letter signed by _____ under date of March 28, 1935, attached to your note of the 20th instant, on which you request my opinion.

It is my opinion that by reason of the amendatory provision of Section 24 of Article III of the Constitution of Florida, which was adopted at the General Election in 1934, the Legislature is prohibited from passing special or local laws incorporating cities or towns, or providing for their government, jurisdiction, powers, duties, and privileges, and that this inhibition applies to any amendment thereto, and that insofar as the amendatory provisions of Section 24 of Article III are inconsistent with the provisions of Section 8 of Article III, the provisions of Section 24 of Article III supersede those of Section 8 of Article 8.

It is my opinion that the only thing the Legislature can now do is to pass general legislation classifying cities and towns according to population, and general legislation providing for their incorporation, government, jurisdiction, powers, duties, and privileges under such classification, and that the inhibition against special or local laws relating thereto became effective upon the ratification of said amendment.

CITIES AND TOWNS

April 5, 1935.

MUNICIPALITIES—PEDDLERS

Dear Sir:

I am in receipt of your letter of the 23rd ultimo enclosing clipping from a drug journal containing copy of an ordinance, making peddling a nuisance and providing a penalty therefor. You make inquiry if this ordinance may properly be adopted in your town.

In reply I beg to say it does not appear that our Supreme Court has passed upon the subject of your inquiry but I quote you from 20 Ruling Case Law 389, Nuisances, 12, as follows:

“MUNICIPAL POWERS OVER NUISANCES.—In reviewing the ordinances of municipal corporations the courts proceed upon a much stricter rule than that governing their decisions in the case of enactments of the general legislature. It is said ordinarily that municipal bodies cannot by ordinance declare that to be a nuisance which, according to the standards of the courts, is not such in fact; and in numerous instances municipal regulations of this character have been held invalid. But it is generally conceded that the legislature may lawfully delegate to municipal corporations, to be exercised within their corporate boundaries, the power to declare what shall constitute a nuisance and to prevent the same; and ordinances adopted pursuant thereto are usually sustained. Such a grant of power, it is held, authorizes the municipality to declare anything a nuisance which is so per se, or which by reason of its location, management or use, or of local conditions and surroundings, may or does become such within the common law or statutory definition of a nuisance, or those things which in their nature may be nuisances, but as to which there may be honest differences of opinion in impartial minds. And where a thing may or may not be a nuisance, depending on its location, management or use, and the conditions existing in the municipality, thus requiring judgment and discretion in determining the matter, the determination of the question by the municipality is held to be conclusive on the courts. Or, if that which the municipality prohibits as a nuisance lies on the border line of a public nuisance, so as fairly to invoke the legislative judgment in determining whether the thing should be prohibited, the municipal ordinance will be accorded the same respect as a statute and will not be declared invalid unless there is a palpable invasion of private rights. * * *

I notice that the copy of the ordinance which you enclose provides for a penalty and for execution to pay the fine. If you should decide to secure an ordinance similar to the one enclosed with your letter, I

CITIES AND TOWNS

would suggest that it might be well to provide for a fine or a jail sentence.

Since our Supreme Court has not passed on this subject, I am not sure just how the Court might hold in such a case but under the above quotation from Ruling Case Law it seems it might be well to try out such an ordinance if it should meet with the approval of your municipal authorities.

Enclosed find clipping returned.

March 14, 1935.

MUNICIPALITIES—POLICE SERVING PROCESS AND WARRANTS
BEYOND CITY LIMITS

Dear Sir:

I have your letter of the 12th instant, making inquiry if a Police Officer of a municipality has a right to serve the City's warrant of arrest outside the limits of said City. You state that you feel sure that we once had such a law but that your books do not seem to have it indexed.

In reply I refer you to Section 3045, Compiled General Laws of Florida, 1927, reading as follows:

"The process of the mayor's court, or other municipal courts, of the cities and town within the State of Florida, shall extend to and may be served anywhere within the territorial limits of the county in which said city, or town, is located, and all summonses, subpoenas, warrants and other process of the mayor's court, or other municipal courts, may be served and executed by the city, or town marshal, his deputies, or other executive officer of such courts, anywhere within the territorial limits of the county within which the court issuing the same is located."

You will find the above Section indexed under the title "Cities and Towns" and under the heading of "Marshals—Process, Execution".

February 19, 1935.

MUNICIPALITIES—ELECTIONS—AMENDATORY STATUTES

Dear Sir:

I am in receipt of your letter of the 16th instant, in which you make inquiry if it is possible under the present laws, as amended by the last General Election, for the coming Legislature to pass a bill call-

April 5, 1935.

MUNICIPALITIES—PEDDLERS

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I am in receipt of your letter of the 23rd ultimo enclosing clipping from a drug journal containing copy of an ordinance, making peddling a nuisance and providing a penalty therefor. You make inquiry if this ordinance may properly be adopted in your town.

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CITIES AND TOWNS

would suggest that it might be well to provide for a fine or a jail sentence.

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March 14, 1935.

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February 19, 1935.

MUNICIPALITIES—ELECTIONS—AMENDATORY STATUTES

Dear Sir:

I am in receipt of your letter of the 16th instant, in which you make inquiry if it is possible under the present laws, as amended by the last General Election, for the coming Legislature to pass a bill call-

CITIES AND TOWNS

ing a City Election in the City of Pensacola requiring the City of Pensacola to pay all election expenses.

In reply I beg to say the Legislature, at the session of 1933, proposed an amendment to the Constitution amending Section 24 of Article III. This amendment reads as follows:

"Section 24. The Legislature shall establish an uniform system of county and municipal government, which shall be applicable, except in cases where local or special laws for counties are provided by the Legislature that may be inconsistent therewith. The Legislature shall by general law classify cities and towns according to population, and shall by general law provide for their incorporation, government, jurisdiction, powers, duties and privileges under such classifications, and no special or local laws incorporating cities or towns, providing for their government, jurisdiction, powers, duties and privileges shall be passed by the Legislature."

This was adopted at our last General Election. You will note that this amendment places upon the Legislature the duty of establishing a uniform system of municipal and county government. Of course, whether or not the Legislature will comply with this imposed duty at the coming session, I do not know. In the event they do not, then the question will arise as to whether or not the Legislature can pass a special law applicable to a town in the face of this constitutional amendment.

This is a question that this office may be called upon, under constitutional duty, to advise the Governor and State Officials; and, therefore, I do not feel that it would be proper at this time for this office to render an opinion to others upon this question.

I would suggest, however, that it might be well for you to consult some attorney with reference to this. All local laws, as a general proposition, must, of course, be advertised. Following the amendment to the Constitution with reference to local laws, my predecessor got out a statement covering this situation which has been printed in pamphlet form for distribution and I herewith enclose you copy of same.

SECTION 3

CITIZENS AND CITIZENSHIP

August 26, 1936.

CITIZENSHIP—RESTORATION TO CONVICTS

Dear Sir:

In your letter of July 18, 1936, you ask me to read the attached file and give an opinion as to the necessity of Mr. _____ having his citizenship restored in this State on account of an offense committed in the State of Michigan.

It appears from the files submitted that this party was convicted of the crime of conspiracy in the State of Michigan, and sentenced to be confined in the State Reformatory at Ionia at hard labor for a maximum period of two years and a minimum period of twenty-three months.

Section 4 of Article VI of the Constitution of Florida provides that no persons convicted of felony by a court of record shall be qualified to vote at any election unless restored to civil rights.

Section 5 of Article VI of the Constitution empowers and directs the Legislature to enact necessary laws to exclude from every office of honor, power, trust, and profit, civil and military, within the State, and from the right of suffrage, all persons convicted of infamous crime.

Section 248 of the Compiled General Laws of Florida, 1927, provides that persons who have been convicted of any felony by any court of record shall not be entitled to vote.

Section 458 of the Compiled General Laws of Florida, 1927, provides that all persons convicted of any infamous crime shall be excluded from every office of honor, power, trust, or profit, civil or military, within this State, and from the right of suffrage.

Section 8495 of the Compiled General Laws of Florida, 1927, provides that all persons who have received or who may receive full pardon from the Board of Pardons shall be entitled to all the rights of citizenship enjoyed by them before their conviction.

The conviction in a court of record for either a felony or any infamous crime disqualifies a person from holding an office of trust or honor, and from the right of suffrage, whether such conviction be in the State of Florida or in some other State.

The inquiry here turns on whether the offense for which Mr. _____ was convicted in the State of Michigan constituted a felony or an infamous crime under the laws of that State at the time of the commission of the offense.

CITIZENS AND CITIZENSHIP

Not being familiar with their laws, I immediately, upon receipt of your letter, addressed an inquiry to the Attorney General of Michigan, as to whether the said conviction as and when had constituted under the laws of that State or as construed by the courts of that State, either (a) a felony, or (b) an infamous crime.

I am now in receipt of a letter from the Honorable David H. Crowley, Attorney General of Michigan, in which he goes quite at length into a discussion of the matter, and concludes by saying that it is his opinion that _____ was convicted of a felony, and also of an infamous crime under the law of Michigan.

Taking this opinion of the Attorney General of Michigan as a correct construction of the laws, it follows that it will be necessary for Mr. _____ to be restored to civil rights by obtaining a full pardon from the Board of Pardons of Florida before he can enjoy the right of suffrage or hold an office of trust or honor under the laws of this State.

October 2, 1935.

CITIZENS, CONVICTS

Dear Sir:

I have your letter of the 30th ultimo, inquiring if the citizenship of a convict is restored upon being discharged at the expiration of his sentence. I assume you have reference to qualifications to vote in elections.

In reply your attention is called to Section 4 of Article VI of the State Constitution, reading as follows:

"No persons under guardianship, non compos mentis or insane shall be qualified to vote at any election, nor shall any person convicted of felony by a court of record be qualified to vote at any election unless restored to civil rights."

Your attention is also called to Section 248, Compiled General Laws of Florida, 1927, relating to the qualification of electors, and particularly paragraphs 4 and 5 of said Section listing certain persons not qualified to vote as follows:

4. "Persons who may have been convicted of any felony by any Court of record."
5. "Persons who may have been convicted of bribery, perjury, or larceny, or of any infamous crime in any Court in this State."

Your attention is further called to Section 458 of the same compilation, which has practically the same provisions as paragraphs 4 and 5 of Section 248, above quoted.

CITIZENS AND CITIZENSHIP

Your attention is further called to Section 8495 of the same compilation, reading as follows:

"All persons who have received or who may receive full pardon from the board of pardons shall be entitled to all the rights of citizenship enjoyed by them before their conviction, whether the pardon is granted before or after the expiration of the sentence or payment of the penalty."

June 7, 1935.

CITIZENS, RESIDENCE

Dear Sir:

Your letter of the 30th ultimo making inquiry as to what is necessary for a person to become a citizen of the State of Florida and addressed to the Governor has been referred to this office.

In reply I beg to say that a citizen of another State may become a citizen of this State upon removing to and residing in the State of Florida with a fixed purpose and intention of making this State his permanent home. However, under our statutes he is required to reside here for sometime to enjoy certain privileges. For instance one must be a resident of the State 12 months and of a particular county for six months before he can vote in this State. House Bill No. 123 of the 1935 Legislature, Chapter 16975, requires three months residence before one is authorized to bring suit for divorce; Citizenship is not mentioned.

SECTION 4

CONVICTS

August 3, 1935.

SALE OF PRISON MADE GOODS

Dear Sir:

Replying to your letter of July 29, I beg to state that there are no State restrictions on the sale of prison-made merchandise within the State of Florida.

May 22, 1935.

PRISONERS—FINGER-PRINTING

Dear Sir:

I am in receipt of your letter of the 8th inst., requesting a summary of the laws of this State relating to finger-printing.

In reply I beg to say that Chapter 13,619, Laws of Florida, Acts of 1929, is an Act creating the Bureau of Criminal Identification and Investigation and providing for finger-printing. However, it appears that said Act was not in fact passed by the House of Representatives and the same is therefore ineffective. There are no other statutes in this State relating to the subject of your inquiry.

April 5, 1935.

CRIMINAL PROCEDURE—FINGER PRINTS

Dear Sir:

I am in receipt of your letter of the 31st ult., stating that you have drafted a Bill to be presented to the present Legislature making finger-printing as a means of identification legal in this State, and making inquiry with reference to the validity of such a Bill if the same should become a law.

In reply I beg to say that Chapter 13,619 printed in the General Laws of 1929 appears to have been such a Bill. Upon examination of the Journal of the House of Representatives it shows that the same was not in fact passed by the House and, therefore, is not a valid statute even though the same appears in the printed copy of the General Laws of 1929. You may, however, be able to secure some suggestions from same for your proposed Bill.

CONVICTS

It does not appear that our Supreme Court has ever passed upon the subject of your inquiry and it seems that very few courts have rendered any decisions with reference thereto. The general holding of other Courts seems to be that a constitutional provision that the defendant in a criminal case can not be compelled to give evidence against himself is not violated by the introduction in evidence of photographs of finger-print impressions which the defendant voluntarily suffered to be taken.

This office is not authorized to give opinions other than to State officers and State boards but I trust that the above may be of some service to you.

March 21, 1935.

PRISONERS—COMPENSATION OR CREDIT

Dear Sir:

Your letter of the 11th instant, addressed to Hon. David Sholtz, Governor, has been referred to this office. You make inquiry with reference to statutes for compensation to convicts.

In reply I beg to say that the only statutes in this State which I find relating to compensation or credit to prisoners or convicts are Sections 8348 to 8350, 8549, 8556, 8557 and 8590, Compiled General Laws of Florida, 1927, which you will doubtless be able to find in the libraries of your City.

February 20, 1935.

CRIMINAL PROCEDURE, SUSPENDED SENTENCE

Dear Sir:

In reply to your letter of February 18th, making inquiry regarding the law of this State as to suspended sentences in criminal cases, permit me to say the practice of postponing or suspending sentences in criminal cases is recognized in this State. The practice is not founded on a statute, but is grounded on public policy. See *Ex Parte Williams*, 26 Fla. 310, 8 So. 425.

In the case of *Tanner vs Wiggins*, 54 Fla. 203, 45 So. 459, 14 Ann. Cas. 718, the Supreme Court of this State said:

"The power of the Court to suspend *execution* of his sentence already lawfully imposed, except for purposes of giving effect to an appeal or where cumulative sentences are imposed, and perhaps in some cases of necessity or emergency, presents another question. The weight of reason and authority is against

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 CONVICTS

existence of such a power, especially where, as with us, exclusive control over the subject of pardons and of the commutation and mitigation of penalties is lodged by our Constitution in other officials than the judge of the Courts."

See also Pensacola Lodge of Elks vs State, 74 Fla. 498, 77 So. 613.

I would appreciate a copy of the opinion of the Supreme Court of Alabama covering this subject, if you can provide a copy without cost to this office.

November 18, 1936.

**CONVICTS—PAROLE TIME FORFEITED ON RETURN TO PRISON
FOR VIOLATION OF PAROLE**

Dear Sir:

You advise that a prisoner was convicted and sentenced, for a term of two years, to the State Prison; that on January 15, 1936, he was released from imprisonment, pursuant to an order of the State Board of Pardons. This order provided that the release was granted and allowed upon the express understanding and condition that the prisoner should thereafter live a law-abiding and peaceable life; and that in default of violation of such conditions, the Board of Pardons reserved to itself the right, without notice or hearing, to revoke said "conditional parole" and to cause the prisoner to serve the full term of imprisonment for which he stood committed. For violation of conditions reserved therein, this order was, as to the prisoner, revoked on August 4, 1936.

You ask whether the time that the prisoner was at liberty under this order, is to be considered as a part of the term for which he was sentenced, or whether he will now have to serve that portion of the sentence which had not been served at the time of his release.

In passing upon this question, it is not necessary that I express any opinion as to whether or not the order of the board in question was, in truth and fact, a "conditional parole", or whether it was a form of conditional pardon. In either event, you will note that the liberty of the prisoner thereunder, was expressly made subject to the right of the board to cause the prisoner to serve the full term of imprisonment for which he stood committed. Upon violation of the conditions expressed therein, the order of release became void and of no effect upon its revocation by the Board of Pardons, so that the situation then was that said Board might cause the prisoner then to serve the term of imprisonment for which he stood committed at the time of the original granting of the order. I am, therefore, of the opinion, and so advise, that the prisoner in question must now serve that portion of his original sentence which had not been served at the time of his release under the order of the Board of Pardons in question.

SECTION 5

CORPORATIONS

June 11, 1936.

AMENDMENT OF CHARTER OF CORPORATION NOT ORGANIZED
UNDER GENERAL CORPORATION ACT OF 1925*Dear Sir:*

This is in reply to your letter of June 10, in which you request my opinion as to whether or not a railroad company incorporated in September, 1926, in accordance with Section 5980 of the Compiled General Laws of 1927, should be required to comply with Section 6016, Compiled General Laws of Florida, as amended by Chapter 13576, Acts of 1929, or Section 6 of Chapter 10096, Acts of 1925. The last named statute is generally referred to as the General Corporation Law of 1925.

It is my opinion that such a corporation must comply with Section 6016, Compiled General Laws of Florida, as amended by Chapter 13576, Acts of 1929. My opinion is based upon the fact that the General Corporation Law of 1925 is expressly limited in its application to corporations incorporated or consolidated under its provisions or to corporations which have been re-incorporated under Section 64 of the 1925 Act. My opinion is further based upon the following provisions contained in Section 3 (10) of said Chapter 10096, Acts of 1925, known as the General Corporation Act of 1925:

"Provided, however, that corporations may not be formed under this Act to conduct in this State the business of banking companies, trust companies, "safe deposit companies, building and loan associations, insurance companies, mutual fire insurance associations, surety companies, express companies, railroad and canal companies, (but street and interurban railway companies may be incorporated hereunder), telegraph and telephone companies, co-operative associations, fraternal benefit societies, state fairs or expositions, cemetery companies, or corporations not for profit;"

I further base my opinion upon Section 62 of Chapter 10096, Acts of 1925, which amends a section of the old corporation law in the following words and figures:

"Sec. 62. Section 4049 of the Revised General Statutes of Florida, is hereby amended to read as follows:

'Any three or more persons may associate themselves and become incorporated for the transaction of any lawful business of a public or private character, including all works of internal improvement; provided, however, no corporations shall hereafter be formed under this Chapter II and Sub-Chapters I to X, both

CORPORATIONS

inclusive, hereof, except corporations of the following classes: Banking companies, trust companies, building and loan associations, insurance companies, mutual fire insurance associations, surety companies, express companies, railroad and canal companies, "telegraph and telephone companies, co-operative associations, fraternal benefit societies, state fairs or expositions and cemetery companies."

February 27, 1936.

CHAPTER 14677, ACTS OF 1931—(A) APPLICATION TO CORPORATIONS IN BANKRUPTCY—(B) APPLICATION TO CORPORATIONS IN RECEIVERSHIP

Dear Sir:

(a) Section 7 of Chapter 14677, Acts of 1931, provides that nothing in said Act shall be construed to apply to a corporation that has been adjudged bankrupt, but that such corporations shall file statements.

It is my opinion that this exemption from the payment of the capital stock tax applies to corporations only while such corporations are in Court and going through bankruptcy proceedings as provided by the Federal Bankrupt Law. In other words, such a corporation is exempt from the payment of the tax imposed by Chapter 14677 only from the time it is by a Federal Court adjudged bankrupt until its final discharge from bankruptcy.

It is my opinion, therefore, that from and after the discharge in bankruptcy, such corporations are required to pay the capital stock tax as required by Chapter 14677.

(b) Section 1 of Chapter 14677 requires reports from all corporation "except such as are specifically exempt in Section 6," and Section 2 requires the payment of the tax by "every corporation required to file reports."

It is my opinion that Sections 6 and 7 contain all the exemptions from the requirements of the Act intended by the Legislature, and since corporations in receivership are not specifically exempt from the requirements of the Act, there is no exemption in favor of corporations in receivership either as to the requirements for reports and/or the payment of the tax.

This, I think, is according to the well recognized rule of statutory construction. It follows, therefore, accordingly that corporations in receivership are required to make the reports and pay the annual tax required and imposed by Chapter 14677, Acts of 1931.

CORPORATIONS

March 24, 1936.

CORPORATIONS—FOREIGN—CANCELLATION OF PERMIT AND
EFFECT*Dear Sir:*

In your letter of the 21st instant you refer to Chapter 16880, Acts of 1935, which provides for the cancellation of permits of foreign corporations delinquent for a period of three years under Chapter 14677, Acts of 1931, and state that the question has now arisen whether, after the cancellation of the permit of a foreign corporation as provided for in Chapter 16880, it could again re-enter the State as in the first instance, as though it had never before been issued a permit and without paying the taxes due under Chapter 14677 at the time its former permit was cancelled.

It is my opinion that the permit of a foreign corporation having been cancelled as provided for and required by Chapter 16880, for failure for three years to comply with Chapter 14677, could not re-enter the State and be granted another permit without the payment of the delinquent taxes for which its former permit had been cancelled.

It is my opinion that Chapter 16880 is complementary to Chapter 14677, and that the two acts should be considered and construed in *pari materia*. Chapter 14677 is primarily a revenue measure and a corporation could not evade the payment of the tax thereby imposed, by allowing its permit to be cancelled, and then re-enter and claim another permit as if it had not become delinquent in the payment of such tax.

March 23, 1936.

CORPORATIONS—APPRAISALS OF STOCK VALUE

Dear Sir:

In your letter of the 19th instant you request my opinion as to your authority to appraise the assets of a corporation, in order to determine the value of its capital stock shares issued and outstanding for the purpose of determining the tax under Chapter 14677, Laws of Florida, Acts of 1931.

The only authority in this respect attempted to be conferred on you by the said Act is to make such investigation as you may consider necessary to either increase or decrease the value of no-par value stock.

The Supreme Court of Florida strongly indicated in the case of *Gray vs. Central Florida Lumber Company*, 104 Fla. 447, 140 So. 321, that you do not have such authority. It was there held that the value of the

CORPORATIONS

corporate assets may be increased by earnings or decreased by losses, but that the capital stock remains static, unless changed by legislative authority. It was also held that par value of stock may or may not coincide with market value, the former being arbitrary designation fixed by the corporation while the latter fluctuates with the assets of the corporation.

It is therefore my opinion that you have no authority under Chapter 14677 to value or change the value of par value stock of corporations as a basis for determining the tax to be paid under the said Act.

January 25, 1936.

CORPORATIONS—TRUST COMPANIES AS EXECUTORS—QUALIFICATION FOR TRANSACTING BUSINESS

Dear Sir:

I have your letter of the 22nd instant advising the County of Orange in securing the right-of-way for a highway has arranged for the trading of lots, one of which lots you state is necessary to be traded for being in the Union Trust Company of Pittsburg, as trustee of an estate, which trust company, you state, is agreeable to making the necessary exchange if the title they would secure would be valid without such trust company having to qualify to transact business in this State. You request my opinion in said matter.

In reply your attention is called to Section 6026, Compiled General Laws of Florida, 1927, which provides that no foreign corporation shall transact business or acquire, hold or dispose of property in this State without a permit from the Secretary of State for the transaction of business and providing penalties for the corporation or its officers violating said Section. Such statute would not appear to apply in this case for the reason that Section 6032 of the same compilation in defining foreign corporations specifically provides that nothing in the article shall apply to or include banking or trust companies incorporated under the laws of any other State.

Your attention is further called to Section 6145 of the same compilation making it unlawful for any corporation to exercise any trust function without having first obtained a charter under the laws of this State, which said Section, however, contains the following provision: "Provided, that nothing in this section shall apply to the making, execution or acknowledgment of any deed theretofore made or that may be thereafter made by any association or corporation organized under the laws of any other State or any trustee, executor or administrator appointed under any will executed by a non-resident, or to the making, execution or acknowledgment of any deed theretofore made or thereafter made by such foreign trustee, executor or administrator." Our Supreme Court in the

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case of Girard Trust Co. v. Tampashores Development Company, et al., 95 Fla. 1010, 117 So. 786, in construing the above quoted proviso of said Section 6145, used the following language:

"It must be assumed that this provision enacted by the Legislature was intended to have some useful purpose. It appears that that useful purpose was to make it lawfully possible for foreign trustees, executors, or administrators appointed under any will by a nonresident to convey and dispose of property in this state owned by the decedent at the time of death, and the legal title to which had passed by will to a trustee, executor, or administrator. If this was the purpose of the legislative act, and we hold that it was, then the act by implication authorizes such trustee, executor, or administrator, appointed under any will of a nonresident decedent, to perform all functions incident to the conveying of the property, and one of the things necessarily incidental to the proper conveyance by a trustee of a trust estate is to secure for the benefit of the estate the proceeds of the conveyance."

Proceeds of the conveyance, in this particular instance, would be the lot to be deeded to the trust company in exchange for their lot.

The above mentioned statutes are all the statutes I find applicable to the present inquiry.

Specifically answering inquiries or questions which appear to be in the minds of officers of the said trust company, I beg to say that title to the lot to be deeded to said trust company, as executor, in exchange for lot deeded by said trust company would not be jeopardized or affected by failure to qualify or to receive permit to do business as a corporation or trust company in this State. I may say further that such exchange of lands would not, in my opinion, be equivalent to the transacting of business in this State unlawfully. I may say further that in my opinion said trust company and its officers would not be liable for statutory penalties in such exchange of lands.

June 13, 1935.

CORPORATIONS, CHARTER TAX

Dear Sir:

In your letter of the 12th instant you state that you have had submitted to you for filing a certified copy of the charter of the RFC Mortgage Company, chartered under the laws of Maryland, with an accompanying affidavit by the president to the effect that all the shares of capital stock have been purchased by and issued to the Reconstruction Finance Corporation, and that said Reconstruction Finance Corporation is the owner and holder of all of said shares of stock.

CORPORATIONS

You state that the filing fee has been tendered, but that the Corporation claims exemption from the payment of the charter tax by reason of the ownership of the shares of stock.

The charter fee is treated by the Courts as a tax, and since the Reconstruction Finance Corporation is an agency of the Federal Government, it is my opinion that the State cannot require the payment of this tax under the circumstances.

January 29, 1935.

CORPORATIONS—EFFECT OF REINSTATEMENT AFTER DELINQUENCY UNDER CHAPTER 14677, LAWS OF FLORIDA, ACTS OF 1931, AS AMENDED BY CHAPTER 15726, LAWS OF FLORIDA, ACTS OF 1931 (SECTIONS 5977 (1) ET SEQ., COMPILED GENERAL LAWS OF 1927, 1934 SUPPLEMENT

Dear Sir:

This is in response to your communication of the 21st instant, involving the above statute, wherein you ask the following question:

"When a corporation had failed to file its annual report and pay its tax under this Act as required by law within the designated period, resulting in its charter powers and privileges being suspended, does the subsequent filing of such report and the payment of such tax restore the charter powers and privileges ab initio or merely from the date of such compliance?"

It is my opinion that under the above mentioned statute, upon the reinstatement of a delinquent corporation, its charter powers and privileges are restored as if it had never been delinquent.

January 28, 1935.

CORPORATIONS—LIABILITY OF OFFICERS OR STOCKHOLDERS AS PARTNERS IN EVENT OF FAILURE TO COMPLY WITH CHAPTER 14677, LAWS OF FLORIDA, ACTS OF 1931, AS AMENDED BY CHAPTER 15726, LAWS OF FLORIDA, ACTS OF 1931, (SECTIONS 5977 (1) ET SEQ., COMPILED GENERAL LAWS OF 1927) 1934 SUPPLEMENT

Dear Sir:

This is in response to yours of the 21st instant, wherein you ask the following question:

CORPORATIONS

"When a corporation has failed to file its annual report and pay its tax, as required by law, within the designated period, resulting in its charter powers and privileges being suspended, if the officers of the corporation continue to do business in the name of the corporation is the effect of such transactions such as to charge them with individual liability as in a partnership?" It is my opinion that your question must be answered in the negative.

As construed by our Supreme Court the statute in question does not work an absolute forfeiture, but merely suspends the corporate and charter privileges until the required reports are filed and fees paid.

See the following cases in support of this opinion:

Gray vs. Central Florida Lumber Company, 104 Fla. 446, 140 So. 320, 141 So. 604;

Jarvis vs. Chapman, Properties, Inc., 110 Fla. 17, 147 So. 860;

Diaz vs. Park Land Estates, 154 So. 199;

Irwin vs. Gilson Realty Company, 158 So. 79.

See also my prior opinion under date of October 12, 1931, reported in Biennial Report 1931-32 at page 839.

See also Annotation, 18 A. L. R. 282.

The intention of the Legislature is further reflected in the enactment of Chapter 15931, Laws of Florida, Acts of 1933, with reference to delinquent corporations taking action to reduce authorized or outstanding capital.

January 26, 1935.

CORPORATIONS—CERTIFICATES IN CONNECTION WITH DISSOLUTION UNDER SECTION 44 OF CHAPTER 10096, LAWS OF FLORIDA, ACTS OF 1925 (SECTION 6570, COMPILED GENERAL LAWS OF 1927)

Dear Sir:

This is in response to your communication of January 9th, wherein you enclose two forms of certificates with reference to the dissolution of a corporation under Section 44 of Chapter 10096, Laws of Florida, Acts of 1925. Both of these forms are predicated on an authenticated resolution adopted by the stockholders, showing the dissolution of such corporation.

You ask for my opinion as to the applicability of these forms in the event all of the stockholders consent to the dissolution.

CORPORATIONS

You will note that under the said Section 44, two distinct situations are contemplated, to-wit: first, action taken at a meeting with two-thirds of the voting power voting in favor of dissolution, and second, consent in writing to a dissolution by all the stockholders of record having voting power.

It is my opinion that under said Section 44 the forms of certificates used by your office and enclosed in your communications, are proper for the first instance above noted. But in the event the second method is used, to-wit: consent in writing to a dissolution by all the stockholders of record having voting power, the form used should be predicated upon such action rather than upon a resolution adopted by the stockholders acting under the first method mentioned.

January 26, 1935.

CORPORATIONS—REDUCTION OF CAPITAL STOCK WHEN ORGAN-
IZED UNDER LAWS IN FORCE PRIOR TO CHAPTER
10096, ACTS OF 1925

Dear Sir:

This acknowledges yours of the 22nd instant, wherein you ask whether or not a corporation organized under the so-called old corporation law, which was in effect prior to the enactment of Chapter 10096, Laws of Florida, Acts of 1925, in order to reduce its capital stock or reduce the par value of the shares thereof, must comply with Section 6016, Compiled General Laws of 1927, by amending its charter and securing a re-issue of letters patent.

You advise that the charter of the particular corporation authorized a fixed amount of capital stock, but contained no privilege clause permitting a corporation to increase or decrease its authorized capital stock, and that letters patent issued, recited that the authorized capital stock should be of a fixed amount with no privilege of increasing or decreasing.

It is my opinion that in spite of the provisions in the letters patent (which are not the charter itself), the method of reducing the capital stock of such corporation or changing the par value of the shares thereof, is that outlined in said Section 6015, Compiled General Laws of 1927, and that it is not necessary to also go through the procedure necessary for an amendment of the charter as outlined by Section 6016, Compiled General Laws of 1927.

There is nothing inconsistent in this opinion with the case of *Randall vs. Mickel*, 103 Fla. 1229, 138 So. 14, 141 So. 317, inasmuch as that case applied to banking companies which were held to be an exception to Section 6014 (regarding increase of capital stock), because of the provisions of Section 6069, Compiled General Laws of 1927.

CORPORATIONS

March 28, 1935.

CORPORATIONS, ANNUAL REPORTS, EXECUTION OF DEEDS OF
CONVEYANCE*Dear Sir:*

Chapter 14677, Laws of Florida, Acts of 1931, requires of all corporations authorized to do business in this State, both foreign and domestic, the filing of annual reports with the Secretary of State, and the payment of designated filing fees thereon.

Section 5 of the Act provides that any corporation failing to comply with the provisions of the Act for six months shall forfeit its corporate and charter privileges. The Secretary of State is required on the first day of each year to make up a list of the corporations of record in his office, which have failed to comply with the provisions of the Act, and mail same to the Clerks of the Circuit Courts, the Civil Courts of Record, the Circuit Judges, and the Justices of the Peace. This is notice to the public as to those corporations which have failed to comply with the requirements of the Act for filing reports and paying the filing fee.

It is my opinion that a corporation which has failed for six months to comply with the Act is without authority to convey its property. Its only authority for conveying property is that given it by its charter, which is a privilege granted by the State, and the State has the right to condition that privilege upon reasonable requirements such as are embraced within Chapter 14677.

In *Gray vs. Central Florida Lumber Company*, 140 So. 320, the Supreme Court of Florida said:

"A franchise to transact business in this State by either a domestic or foreign corporation is a privilege which may be granted or withheld as the State deems proper. This premise established, it necessarily follows that such a franchise may be granted on such terms as the sovereignty may prescribe, so long as not in conflict with the Constitution. The Act brought in question does not attempt to deprive a corporation of its franchise for failure to comply with its terms, but it makes the payment of its filing fee a prerequisite to transact business, and punishes it by withholding all its charter privileges if not paid in six months. This is a reasonable regulation not nearly so harsh as that imposed in other states for a like delinquency."

In *Diaz vs. Parkland Estates*, 154 So. 199, the Court upheld the Act as denying the corporation the right to maintain a suit when the corporation was in default of its requirements under the Act, but said that the judgment rendered for the corporation was not void but voidable.

CORPORATIONS

It is my opinion that a person accepting a deed from a corporation in default of its duty to make the report and pay the filing fee required by the Act, would do so at a great risk, since he may inform himself at the Clerk's office as to whether the corporation has complied with the Act in question.

March 6, 1935.

CORPORATIONS—NECESSITY OF APPEARING IN ACTION BY OR AGAINST BY ATTORNEY

Dear Sir:

This acknowledges receipt of yours of the 1st inst., wherein you ask whether or not a corporation can legally institute and maintain its own suits at law, or defend suits filed against it, without the appearance of an attorney at law representing such corporation. The specific question you ask is based upon the filing of a suit by a Florida corporation with the secretary bringing the proper papers into your office and maintaining that he is an executive part of the corporation and that the corporation is in fact instituting its own suit.

In reply I beg to advise that all the authorities I have been able to find lay down the fundamental rule that a corporation may not appear as plaintiff or defendant in a suit except by attorney and that such attorney must be a member of the Bar. Otherwise, officers or agents of such corporation who actually conduct the litigation would be engaged in the unauthorized practice of law, assuming, of course, that they are not admitted to practice. In other words, a corporation has a legal person may only act through natural persons, and when it acts with reference to matters in the courts, the natural persons representing it must be attorneys admitted to practice law.

The use of the word "person" in Section 4163, Compiled General Laws, 1927, can obviously have no reference to an artificial persons such as a corporation because such artificial person is incapable of managing its own suits except through the intervention of natural persons.

The following authorities sustain this opinion: 14A C. J. 812, Sec. 2921; Commercial etc. Bank vs. Slocum, 14 Pet. 60, 10 Law Ed. 354; Osborn vs. United States Bank, 9 Wheat. 737, 830, 6 Law Ed. 204; Culpeper Nat. Bank Inc. vs. Tidewater Improvement Company, Inc., 119 Va. 73, 89 S. E. 118, 4 Min. Inst. (2nd Ed.) page 683, 5 Rob. Pr. page 23, Chitty's Pleadings (16 AM. Ed.) page 577.

CORPORATIONS

December 21, 1936.

CORPORATIONS—REINCORPORATION UNDER ACT OF 1925

Dear Sir:

In your letter of December 11, 1936, you state that a corporation organized under the laws of Florida prior to the General Corporation Law of 1925, with an authorized capital stock of \$200,000 divided into 2000 shares of the par value of \$100 per share, has filed with you its certificate of reincorporation under the General Corporation Law of 1925, but in its certificate of re-incorporation the capital stock structure is changed as follows:

Fifteen hundred shares without par value and five hundred shares of the par value of \$100.

This presents the question whether the corporation shall be subject to the payment of an additional charter tax for such re-incorporation.

Section 6589 of the Compiled General Laws of Florida, 1927, provides that any corporation organized and existing under the laws of this State July 15, 1925, may re-incorporate under the provisions of the General Corporation Law of 1925, without being subject to the payment of an additional charter tax for such re-incorporation. It is my opinion that this provision is to be construed to mean that no additional tax is required for re-incorporation under the 1925 Act of a corporation as it existed under the old corporation law. Here we have a different situation. The corporation in question is changing its charter as it existed under the old law, and files its certificate of re-incorporation with a capital stock structure different from what it had under the old law.

In other words, in coming under the General Corporation Law of 1925, it has abandoned the charter as it existed under the old Corporation Law and in so doing it has in my opinion subjected itself to the same fees and taxes as if originally incorporated under the General Corporation Law of 1925.

I am returning the letter of Messrs. _____, addressed to you under date of December 10, 1936.

SECTION 6

HOLIDAYS

NO CORRESPONDENCE

SECTION 7

INSPECTION LAWS

OCTOBER 30, 1935.

GENERAL INSPECTION FUND, USE TO BRING CONVENTION OF
KNIGHT TEMPLARS TO THIS STATE*Dear Sir:*

This is in reply to your favor of October thirtieth in which you request my opinion as to whether or not you would be authorized to contribute a sum out of the general inspection fund to aid in bringing to the State of Florida the Triennial Convention of the Knight Templars. You state that this convention will bring thousands of people to Florida and will thus advertise our resources to them at first hand.

I beg to advise that Chapter 10029, Laws of Florida, Acts of 1925, provides that the Commissioner of Agriculture shall publish and distribute information and *otherwise advertise the State of Florida* through the Bureau of Immigration for the purpose of attracting desirable immigrants and drawing investors to the industries of the State of Florida. Under Section 26 of Article IV of the State Constitution, you keep the Bureau of Immigration. Thus it is that you and you alone, as Commissioner of Agriculture, control the use and expenditure of the funds so appropriated for such advertising purposes. The fund appropriated for advertising purposes was increased from fifty thousand to seventy-five thousand dollars annually from the general inspection fund. See Chapter 11833, Laws of Florida, Acts of 1927.

I am of the opinion that you have authority as Commissioner of Agriculture to expend such an amount out of the general inspection fund as in your judgment would be wise and proper to bring the Triennial Convention of the Knight Templars to the State of Florida—such expenditure being based on your judgment as to the value and extent that this would constitute a proper advertising of the resources of the State of Florida.

INSPECTION LAWS

October 31, 1935.

FERTILIZER ANALYSTS

Dear Sir:

I am in receipt of your letter of the 29th instant calling my attention to Section 9 of Chapter 16,999, Laws of Florida, Acts of 1935, amending section 3811 and 7233, Compiled General Laws of Florida, 1927, providing for the payment of the fee of 25c per ton by the manufacturer or agent for commercial fertilizer offered for sale in the State of Florida, and providing that 5c out of each fee so paid shall be placed into a Special Fund and not into the General Inspection Fund of the State, and further providing that said Special Fund shall be available to the Commissioner of Agriculture for use in enforcing the law. You make inquiry as to whether or not payment from such Special Fund may be made to fertilizer analysts for making chemical analyses of fertilizer, and if payments can be so made, whether or not the salaries for such services are limited to any particular amount.

In reply I beg to say that Section 9 of Chapter 16,999, Laws of Florida, Acts of 1935, must be considered in connection with other provisions of said statute. By reference to Sections 3 and 4 of said Act you will note that it shall be the duty of the State Chemist to analyze samples of commercial fertilizer and that he is required to have the same analyzed and make a certificate of such analysis. Since official analyses of commercial fertilizers are required to be made by the State Chemist it would appear, under the law, that the Commissioner of Agriculture would not be authorized to employ other persons to make such analyses.

October 19, 1935.

FERTILIZER TAGS AND CERTIFICATES OF STATE CHEMIST,
FORMS*Dear Sir:*

I answer your letter of the 15th instant, as follows:

1st. The information required to be shown on fertilizer tags as the guaranteed analysis is as provided by Section 5 of Chapter 16999, Acts of 1935, minus the showing as to acid-forming or non-acid-forming qualities of such fertilizer.

2nd. Fertilizer tags showing the guaranteed analysis should contain no reference as to its acid-forming or non-acid-forming qualities.

3rd. The certificate of the State Chemist as to the analysis of samples of fertilizer, drawn under Chapter 16999, should conform to the

holding of the final decree of the Circuit Court in the case of Trueman Fertilizer Company vs. Mayo et al, in all cases where the certificate is issued subsequent to the 12th day of October, 1935, the date of said final decree.

August 22, 1935.

CITRUS FRUIT INSPECTION—GRADE AND MATURITY

Dear Sir:

In your letter of the 20th inst., you refer to Senate Bill No. 16, Chapter 16854, Senate Bill No. 17, Chapter 16855, and Senate Bill No. 657, Chapter 16863, Acts of The Legislature of 1935, passed to regulate the citrus industry, and you ask whether you have the authority to make grade and maturity inspections of citrus fruit and issue certificates, if requested so to do, or whether you are without authority to make these inspections until a citrus commission is appointed and establishes standards for grades and promulgates rules and regulations for enforcing the maturity law.

These acts were passed to protect and promote the citrus industry and should be read together as one act.

Senate Bill No. 16 creates and establishes a State Citrus Commission to be appointed by the Governor, which commission is charged with the duty of making and promulgating the necessary rules and regulations for carrying out the purposes of said act. Among other things, the Commission has full and plenary powers to establish standards for state grades of citrus fruit and for containers therefor, and also to prescribe rules, regulations and orders governing the marks or tags which may be required upon citrus fruit or containers therefor, as a prerequisite to the right to market said fruit and also to make and promulgate regulations for determining by inspection whether citrus fruit is immature or otherwise unfit for human consumption.

You are charged with the duty of enforcing these laws, but under such rules, regulations and orders as may be made and promulgated by the Commission as to grades and maturity and fitness for human consumption, and as to the use of tags certifying the result of your inspection.

It appears, therefore, that you cannot enforce the act as to grades or maturities or fitness for human consumption or the furnishing of tags until the standards of grades are established by rules and regulations and until rules and regulations are made and promulgated as to maturity tests and tests as to fitness for human consumption and until the marks or tags required upon such fruit have been prescribed by the Commission.

INSPECTION LAWS

Citrus fruit found to be immature or unfit for human consumption upon inspection and testing, can be seized and destroyed only "as may be provided by regulations prescribed by the Florida Citrus Commission."

It is my opinion, therefore, that you are without authority to enforce the provisions of these acts until the Florida Citrus Commission, created by Senate Bill No. 16, has made and promulgated the rules, regulations and orders required by said acts for the enforcement thereof.

January 30, 1935.

COMMERCIAL FEEDING STUFFS—TAG OR LABEL

Dear Sir:

I am in receipt of your letter of the 24th instant, enclosing a communication from Mr. _____, Secretary of the Poultry Producers of Central Florida, with reference to form of tag prescribed by the Commissioner of Agriculture for commercial feeding stuffs. Mr. _____ suggests that the Commissioner of Agriculture require the ingredients of the feed to be listed on the tag in the order of their quantity and percentage values, beginning with the largest and ending with the smallest.

Sections 3255 to 3267, Compiled General Laws of Florida, 1927, relate to commercial feeding stuffs. Your attention is called particularly to Sections 3257 and 3267.

After a careful reading of the statutes I am doubtful of the Commissioner of Agriculture having authority to make the requested requirement with reference to tags. If it is desirable that this feature appear on such tags, the same may be taken care of by the next Legislature which convenes in about two months.

Enclosed find correspondence attached to your letter.

April 8, 1935.

INSPECTION TAGS—REFUND FOR COST OF TAGS

Dear Sir:

In your letter of the 5th instant you state that the Honorable _____ has requested that his necessary and regular expense fund be credited with \$6,623.42, representing refunds to the Commissioner of Agriculture of a portion of price paid by that Department for inspection tags, and request my opinion as to the legality of so doing, and whether this would increase a budgeted item in the Appropriation Bill to that amount.

INSPECTION LAWS

It is my opinion that this should be treated as an advancement made by the Commissioner of Agriculture, and not as an expenditure, and that the same should be placed back in the same fund, and treated as never having been spent by the Department.

In other words, if the full amount expended by the Agricultural Department in procuring tags has been charged up against the Department, then that account should be credited with the amount of the refund, so as to reduce the amount shown on the books to have been so spent by the Department, and this would not have the effect of increasing the budgeted item in the appropriation for that fund.

SECTION 8

NATIONAL GUARD

February 26, 1936.

STATE MILITIA—PAYMENT FOR SUPPLIES LOANED RED CROSS
FOR USE OF HURRICANE SUFFERERS NOT RETURNED
—CHAPTER 13,630 OF 1929*Dear Sir:*

Answering your inquiry I beg to say in my opinion supplies loaned by the State Military Department to the Red Cross for use in connection with hurricane disasters in this State, which supplies have been used up or lost and not returned, may be paid for under Chapter 13,630, Laws of Florida, Acts of 1929, upon requisition of the State Military Department, specifically setting forth that the requisition is made for such purposes.

April 11, 1935.

NAVAL MILITIA

Dear Sir:

You have handed me letter under date of April 9, 1935, from the Office of the Adjutant General, enclosing copy of proposed act creating and providing for the Florida Naval Militia.

I have checked both the State and Federal laws and cannot understand the necessity for this proposed legislation. By Section 2015, Compiled General Laws, 1927, the naval militia is one of the four component parts of the militia of this State; by Section 2018 you, as Governor, are the commander-in-chief of all the military and naval forces in the State. Your powers as such are outlined in Section 2019, which specifically mentions the naval militia and gives you power in case of emergency, as set forth, to order into active service of the State all or any part of the militia, which, of course, would include the naval militia; by the same section it is made your duty in certain instances to order out for Federal service the naval militia. The duties of the Adjutant General give him supervision over all troops, arms and branches of the militia and require him to prepare such reports and returns as the Secretary of the Navy may prescribe and require, and he is required by Section 2024 to report to the Governor the number and condition of the national guard, the naval militia and the marine corps.

Specifically, by Section 2029 you are authorized in your discretion "to organize a naval militia and a marine corps in accordance with the laws now existing or which may hereafter be enacted by the Congress of the United States governing the naval militia or marine corps of the

NATIONAL GUARD

United States, and regulations issued by the Secretary of the Navy for the government of the United States Navy, naval militia and marine corps."

By Title 24, Section 841, provision is made for Federal recognition of such part of the organized militia of the State as may be prescribed. Provision is also made with reference to the regulations by the Secretary of the Navy, the qualification of officers in the naval militia, and the assignment to such naval militia by the Secretary of the Navy of such vessels, material, armament, equipment, and other facilities available.

Under these existing statutes it appears to me the only thing necessary is to ascertain from the Navy Department the rules and regulations and issue your executive order organizing the naval militia in accordance therewith. However, I suggest that you further consider the matter with the Adjutant General to ascertain his views in regard to the necessity of this proposed legislation.

SECTION 9

NEPOTISM

January 24, 1935.

NEPOTISM—CHAPTER 16,088, ACTS OF 1933.

Dear Sir:

I am in receipt of your letter of the 21st instant, together with copy of your opinion, under the same date, relative to the Board of Public Instruction employing school teachers recommended by Special Tax School District Trustees when such teachers are related to said Trustees so recommending them, reading as follows:

"Complying with the request for my opinion as to whether it is illegal for the trustees of School District No. 4 to recommend and for the County School Board to employ a relative of a member of the Board of Trustees of School District No. 4, I beg to advise that in my opinion such recommendation by the trustees and the employment by way of appointment by the County School Board of such person recommended by the trustees is not in violation of Chapter 16088, Acts of the Legislature of 1933."

In reply to your inquiry I beg to say that I concur with you in your opinion on the ground recited by you in your letter that the Board of Public Instruction and not the Trustees is the employing agency and for the further reason that our Supreme Court in the case of *State ex rel. Robinson, et al. vs. Keefe, et al.*, 111 Fla. 701, 149 So. 638, held that said Act would not apply to the employment of public school teachers.

SECTION 10

NEWSPAPERS

September 21, 1935.

NEWSPAPERS, SUCCESSORS, LEGAL ADVERTISEMENTS

Dear Sir:

I have your letter of the 18th instant, stating that you contemplate converting the Bay County Herald from a weekly to a daily newspaper and would also like to change the name from Bay County Herald to Panama City Herald. You make inquiry if changing the name will in any way affect your right to accept City and County legal advertising.

In reply I beg to say so far as the general laws are concerned I do not think that the mere change of the name would affect your qualifications as a newspaper for carrying legal advertisements. Your attention is called to Chapter 14,830, Laws of Florida, Acts of 1931, now Section 4274 (1), Compiled General Laws of Florida, 1934 Supplement. You will note that said statute prescribes the qualifications of a newspaper for publishing legal advertisements and after the description of such qualifications uses the following words: "or in a newspaper which is a direct successor of a newspaper which has been published."

January 26, 1935.

NEWSPAPERS—PUBLICATION OF TAX SALE LISTS IN NEWSPAPERS PUBLISHED AND OWNED BY STATE OFFICER

Dear Sir:

I am in receipt of your letter of the 24th instant, making inquiry if The Public Record, a newspaper published by and owned principally by you would be authorized to publish delinquent tax sale notices.

In reply I refer you to Sections 1978 and 1979, Compiled General Laws of Florida, 1927, reading as follows:

1978. "*Public Printing to be let to lowest bidder. All the public printing of the State of Florida shall be let out upon contract to the lowest responsible bidder, who shall furnish all papers and other material used in printing and binding.*"

1979. "*State officers not to be interested in contract. No member of the Legislature or other officer of this State shall be interested, directly or indirectly, in such contract.*"

Your attention is further called to Section 969, Compiled General Laws of Florida, 1927, as amended by Chapter 14572, Acts of 1929, which provides for the County Commissioners to select the newspaper for pub-

NEWSPAPERS

lication of tax sale lists and prescribes a specific charge for such services.

From the above it appears that the prohibition in Section 1979 against members of the Legislature or other State officers being interested in printing contracts, relates only to the class of printing let upon bids therefor, and does not apply to the publication of tax sale lists, where a specific price is fixed for such printing, and the paper is selected under the statute by the County Commissioners.

January 12, 1935.

NEWSPAPERS—LEGAL NOTICES

Dear Sir:

I am in receipt of your letter of the 15th ultimo, with reference to legal notices published in newspapers, the second paragraph of which reads as follows:

"Is it legal for a newspaper to publish legal notices in 5½ agate, rather than the set 6 point non-pareil, and thereby cut down on their rates which are otherwise set by law?"

In reply your attention is called to Section 4668, Compiled General Laws of Florida, 1927, reading as follows:

"The publisher of any paper publishing any official notice or legal advertisement shall not charge more than one dollar per inch for the first insertion, and fifty cents per inch for each subsequent insertion, in single column, non-pareil type (except where the regular established minimum commercial rate per inch is in excess of the rate herein stipulated, said minimum commercial rate per inch shall be the legal rate, for first, and each subsequent insertion), and when any official notice or legal advertisement is required by law to be published more than two months, the charge shall not exceed three-fourths of the above rates for all the excess of time, above two months, of said publication."

The above quoted Section appears to be the statute governing legal notices, except tax sale lists which are controlled by Section 969, Compiled General Laws of Florida, 1927, as amended by Chapter 14,572, Laws of Florida, Acts of 1929.

The purpose of the above quoted Section appears to be a limitation upon the maximum price to be charged and not a limitation upon the minimum price. Neither does said Section appear to require all legal notices to be printed in non-pareil type, but whatever type is used the price must not exceed the estimated price if printed in non-pareil type. See *Dodd vs. McColskey*, 97 Fla. 176, 120 So. 315.

SECTION 11

NOTARIES PUBLIC

NO CORRESPONDENCE

SECTION 12

PENSIONS

April 16, 1936.

PENSIONS—OLD AGE

Dear Sir:

I am in receipt of your letter of the 14th instant with reference to Old Age Pensions.

In reply I beg to say Article XIII, Section 3 of the State Constitution, provides that the respective counties of the State shall provide in the manner prescribed by law for those of the inhabitants that by reason of age, infirmity or misfortune may have claims upon the aid and sympathy of society. Your further attention is called to Senate Joint Resolution No. 170 of the last Legislature appearing on page 1512, Laws of Florida, Acts of 1935, proposing an amendment to said provision of the Constitution to be voted on at the General Election of 1936. The proposed amendment in addition to the authority given to counties, as above recited, provides that the Legislature may by general law provide for a uniform Statewide system for such benefits and appropriate money therefor. This proposed amendment, of course, can have no force and effect until the same is adopted by vote of the people at the next General Election in November of this year.

For your further information I refer you to Chapter 17,141, Laws of Florida, Acts of 1935, which is an Act to provide for the relief of the aged and infirm citizens of the various counties of the State of Florida. I regret I have no copies of said Act or the above proposed Constitutional Amendment to send you but you can probably see the same at the office of some of your County officials if you should so desire.

With reference to your further inquiry: "Is there any reason now for any firm in the State of Florida collecting any percentage of the employees wages for any tax either State or National?" I beg to refer you to Hon. Wendell C. Heaton, Chairman Florida Industrial Commission, Tallahassee, Florida.

PENSIONS

March 19, 1936.

PENSIONS—ENDORSEMENT OF WARRANT

Dear Sir:

I am in receipt of your letter of the 10th instant with reference to warrant No. 011034 drawn to Mrs. _____ in the sum of \$40.00, which you state was returned by the State Treasurer unpaid because it had not been endorsed.

Upon an examination of said warrant I find on the back of same an oath by Mrs. _____ that she is a bona fide citizen of Tampa, has not been married since granted a pension and that the claim is just and correct, which is sworn to before the Ordinary of Decatur County, Bainbridge, Georgia, with the certificate of the Ordinary that the pensioner is personally known to her; that she has not remarried since being granted a pension; that she is a bona fide citizen of Tampa, Florida, and is the person in whose favor the warrant is drawn. Attached is the seal of the Ordinary.

Your letter further advises that Mrs. _____ died on March 6th after having signed the above certificate on said warrant, which precludes any further endorsement by her. It also appears from the correspondence attached to your letter that this warrant was cashed at First National Bank, Bainbridge, Georgia, prior to the death of Mrs. _____.

In reply to your inquiry I beg to say in my opinion, under the circumstances of this case, that the State Treasurer would be justified in considering the signed certificate by the pensioner on the back of the warrant as sufficient endorsement of said warrant.

August 22, 1935.

SOCIAL WELFARE—OLD AGE PENSIONS

Dear Sir:

I acknowledge receipt of your letter of the 20th inst., in which you inquire as to whether Chapter 17141, No. 370, House Bill 606, known as the "Old Age Pension Bill," conflicts with the "1935 Social Welfare Act of Florida," Committee substitute for House Bill 518, Chapter 17477 of 1935, and whether or not the Social Welfare Act repeals the Old Age Pension Bill.

I have examined both Acts and I find that they have independent fields of operation and both should be given effect in construing them.

PENSIONS

Section 12 of the Old Age Pension Bill provides:

"No one receiving an old age assistance under this Act shall at the same time receive any other relief or pension from the State or from any political subdivision thereof, except for medical and surgical assistance."

This section would limit the benefits to be received by those coming under the provisions of the Old Age Pension Bill to medical and surgical attention under the Social Welfare Act, that provides in Section 11 thereof, paragraph 3:

"Medical or other remedial care and attention for those who may be subject to the jurisdiction of the State Board or District Boards may be provided in hospitals, dispensaries, the person's home, or any suitable place, as provided for and directed by said State or District Board."

In the case of *State vs. Johnson*, 71 Fla. 362, 72 So. 477, the Supreme Court of Florida said:

"It is to be presumed that different acts on the same subject, passed at the same session of the Legislature, are imbued with the same spirit and actuated by the same policy, and they should be construed each in the light of the other. The legal presumption is that the Legislature did not intend to keep really contradictory enactments in the statute book, or to effect so important a measure as the repeal of a law without expressing an intent to do so. An interpretation leading to such a result should not be adopted unless it is inevitable. The rule of construction in such cases is that if courts can, by any fair, strict, or liberal construction, find for the two provisions a reasonable field of operation, without destroying their evident intent and meaning, preserving the force of both, and construing them together in harmony with the whole course of legislation, it is their duty to do so."

Giving the Acts in question this construction, we find there are ample fields of operation for both Acts, and that the passage of the Social Welfare Act did not operate to repeal the provisions of the Old Age Pension Bill.

May 14, 1935.

PENSIONS

Dear Sir:

I am in receipt of your letter of the 13th instant, advising that you passed a pension bill through the Senate and it passed the House and

PENSIONS

came back with an amendment eliminating the repealing clause. You make inquiry if the Pension Board would be required to pay the pension if the Senate should concur in the amendment eliminating the repealing clause.

In reply your attention is called to Section 2098, Compiled General Laws of Florida, 1927, prescribing the qualifications of pensioners. Your attention is further called to Section 2108 of the same compilation authorizing the Pension Board to discontinue from the pension roll any pensioner upon satisfactory evidence that said pensioner is not entitled to receive a pension under the provisions of the Article of which Sections 2098 and 2108 are a part. Your attention is further called to Section 2121 of the same compilation, making it the duty of the State Pension Board to investigate the War record of all pensioners under Special Act of the Legislature and upon certain findings to strike the name of such pensioner from the pension roll.

Your attention is further called to the case of State ex rel, Hawkins vs. Amos, State Comptroller, 97 Fla. 675, 122 So. 8. In the Court's opinion mention is made of Chapter 9206, Acts of 1923 (now Section 2121 above referred to). Mention is also made of the fact that the Special Pension Act in question before the Court contained no repealing clause. The Court sustained the Comptroller in his refusal to allow the pension.

In view of the above it is my opinion that the Pension Board may, under Sections 2108 and 2121, above referred to, remove a pensioner from the pension rolls when such pensioner is placed on the roll of Confederate pensioners by virtue of a Special Act containing no repealing provision or clause.

January 17, 1935.

PENSIONS—RELIEF FOR BLIND AND HELPLESS

Dear Sir:

Answering your letter of the 11th inst., I beg to say I do not know of any statute providing for State special aid in the nature of a pension to blind and helpless citizens.

Paragraph 4 of Section 2153, Compiled General Laws of Florida, 1927, provides for the County Commissioners in each County to have the care and provide for the poor and indigent people of the County. Since you make further inquiry with reference to tax exemptions on property, I assume that the party in whose interest you are writing does not come under the class of poor and indigent.

With reference to exemptions from taxation I refer you to Sections 9 and 11 of Article XIX of the State Constitution, reading as follows:

PENSIONS

Section 9. "There shall be exempt from taxation property to the value of five hundred dollars to every widow that has a family dependent on her for support, and to every person who is a bona fide resident of the State and has lost a limb or been disabled in war or by misfortune."

Sec. 11. "No tax upon inheritances or upon the income of residents or citizens of this State shall be levied by the State of Florida, or under its authority, and there shall be exempt from taxation to the head of a family residing in this State, household goods and personal effects to the value of Five Hundred (\$500.00) Dollars."

I also refer you to paragraph 7, Section 897, Compiled General Laws of Florida, 1927, which statute is practically identical with Section 9 of Article XIX of the State Constitution, above quoted.

January 26, 1935.

PENSIONS—CRIPPLED CHILDREN OF CONFEDERATE SOLDIERS

Dear Sir:

Answering your letter of the 25th inst., I beg to say I do not know of any pension or other State fund provided for payment to crippled children of Confederate soldiers. Your attention is called to Chapter 13,620, Acts of 1929, providing for the Florida Crippled Children's Commission, which applies only to children under 17 years of age whose parents, or those standing in place of parents, are unable financially to provide for same.

November 19, 1936.

**OLD AGE PENSIONS—SENATE JOINT RESOLUTION OF 1935,
AMENDING SECTION 3, ARTICLE XIII OF STATE CON-
STITUTION PERMISSIVE AND NOT MANDATORY
—RESIDENSE**

Dear Sir:

I am in receipt of a copy of the letter recently sent you by Mr. ———, Chief, Division of Plans and Grants, in which he requests a statement from me as to whether or not the constitutional amendment adopted at the election of November 3, 1936, has any effect upon the old age assistance plan now in operation and, if so, the extent of that effect. He also inquires whether or not the residence provision of the present plan is invalidated by the amendment; also if the amendment became effective on the date of the election, November 3rd.

PENSIONS

I wish to call your attention to the fact that the provision authorizing the Legislature to provide for a uniform state-wide system is permissive and not mandatory. The amendment is not self-executing and only authorizes the Legislature to provide for a state-wide system. The amendment itself became effective on the date of the election, November 3rd.

It is, therefore, my opinion that the constitutional amendment has no effect upon the old age assistance plan now in operation and that, therefore, the residence provision of the present plan is not invalidated by the terms of the amendment.

SECTION 13

PUBLIC RECORDS

January 29, 1936.

PUBLIC RECORDS—MARRIAGE LICENSES

Dear Sir:

This is in reply to your inquiry of January 25.

It is my opinion that under the provisions of Section 5855, Compiled General Laws of Florida, the record of marriage licenses and certificates would constitute a public record, which, under the provisions of Section 490, Compiled General Laws, should be open to examination by citizens.

SECTION 14

SECURITIES ACT (Blue Sky)

NO CORRESPONDENCE

SECTION 15

SLOT MACHINES

September 21, 1936.

CHAPTER 17257, LAWS OF FLORIDA, ACTS OF 1935—SLOT
MACHINE REFERENDA*Dear Sir:*

I have your letter of recent date, requesting that I advise you upon two questions in connection with Chapter 17257, Laws of Florida, Acts of 1935.

First, you ask that I advise whether, when a petition is submitted to a board of county commissioners, pursuant to Section 12A of said Chapter, such Board will have to count the signatures and check the registration books to see if the petitioners are qualified. The section in question provides, in part, as follows:

"Upon petition of twenty percent of the qualified electors of any county, the county commissioners of such county shall provide for the submission to the electors of such county, at the then next succeeding general election, the question of whether any permit or license theretofore granted for the operation of any of the machines or devices described in this Act, shall be continued or revoked * * *"

From this it would seem to be clear that the county commissioners, upon such petition being presented, must satisfy themselves that the requirements of the law, relative to the petition, have been complied with. In order to do this, it seems to me to be clear that it would be necessary for them to count the signatures and check the registration books, to see that the petitioners are qualified.

Your second question is as to the form which the question should take when printed on the ballot. In my opinion, the form of question as follows, would be sufficient:

"Shall the permits and licenses heretofore granted for the operation in _____ County, Florida, of coin-operated machines and devices, described in Chapter 17257, Laws of Florida, Acts of 1935, be continued or revoked?"

For Continuance _____

For Revocation _____

Of course, the name of the county in which the question is to be submitted, should be inserted in the blank immediately preceding the word County, in the question stated above.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
SLOT MACHINES

April 24, 1936.

SLOT MACHINES—LICENSES—LESSOR AND LESSEE

Dear Sir:

This is in reply to your inquiry of March 24, in which you set forth the following quotation from a letter received by you from an attorney:

"We represent a client who is a chain Location Slot Machine Operator who also hold an Operator's License. That is to say, our client holds license or franchise in the form of a lease of space in various cigar stores, etc., for the operation of slot machines, which machines are under his absolute control.

"Is the client, or his lessors, liable for the additional license imposed by the recent Supreme Court ruling on slot machines. We contend that by reason of the aforementioned leases of space for the operation of machines that our client is a location operator under the terms of the slot machine law, and is therefore, not liable for but one license on each machine and that the owner of the business establishment wherein our client's machines are located are not liable for any license on said machines."

By construing both paragraphs of Section 3 of Chapter 17257, Laws of Florida, Acts of 1935, together, it is my opinion that the contention hereinabove stated is not tenable. Section 3 of said statute defines an "operator" to be any person, firm or corporation who leases or rents out or *places, under any sort of arrangement whatsoever*, with any other person, or a location operator, any coin-operated device or devices.

Section 3 defines a "location operator" to be any persons, firm or corporation who displays any coin-operated device or devices to the public to be played or operated by the public.

The point to be determined is whether the fact that the owner of the machines holds licenses or franchises in the forms of leases of space in various cigar stores, etc., for the operation of slot-machines removes the owner of the machines from the category of an "operator" as defined in the Act and makes him a "location operator." It is my opinion that the owner of the machines would come within the definition of "operator," particularly by reason of the provisions therein contained which are hereinabove underscored. It is also my opinion that the lessors come within the purview of the legislative definition of "location operator." It therefore follows that the owner of the machine and the lessor will be subject to the license taxes imposed by the statute on an operator and a location operator respectively.

SLOT MACHINES

June 16, 1936.

LICENSE FOR OPERATING SLOT MACHINE REVOKED AS OF DATE
OF ELECTION WHEN MAJORITY VOTE IN FAVOR
OF REVOCATION*Dear Sir:*

Receipt is acknowledged of your letter requesting my opinion upon the following question:

If an election is held in a County under Section 12A of Chapter 17,257, Acts of 1935, upon the question of whether any permit or license theretofore granted for the operation of any of the machines or devices described in the Act shall be continued or revoked and a majority of the electors voting on such question in such election vote to cancel or recall the license or permit, are the licenses or permits revoked as of the day of the election or do they continue in force and effect until they expire by their own terms, which would be the following September 30th?

Section 12-A of the Act reads as follows:

"Section 12-A. Upon petition of twenty percent of the qualified electors of any county the County Commissioners of such county shall provide for the submission to the electors of such county at the then next succeeding general election, the question of whether any permit or license theretofore granted for the operation of any of the machines or devices described in this Act shall be continued or revoked and if the majority of the electors voting on such question in such election shall vote to cancel or recall the licenses or permits theretofore given, then the Comptroller of the State of Florida and the Tax Collector of such county shall not thereafter grant any license for the operation of the machines and devices described in this Act. Provided, further that any County revoking such licenses shall not thereafter participate in any of the revenues derived under this Act."

While the reading of the Statute is not altogether clear, it is my opinion that it was the intention of the Legislature to make the revocation of the license or permit effective from the day of the general election at which a majority of the electors voting on such question vote to cancel or recall the license or permit. There is no provision of law whereby the holder of a license or permit which is revoked can obtain any refund of money paid for such license or permits. These licenses are issued as of October 1st of each year and a persons purchasing one on a general election year does so with full knowledge that it may be revoked at the general election the following November.

SLOT MACHINES

June 22, 1936.

SLOT MACHINES ON BOATS

Dear Sir:

This is in reply to your request for my opinion as to whether or not slot machines on a boat plying between Miami and Key West come within the licensing provisions of Chapter 17257, Acts of 1935. You state that the machines are in a cabinet which is locked before the boat lands and kept locked until the boat gets under way again.

The territorial boundaries of the State of Florida are defined in Article I of the Florida Constitution. The Legislature of Florida is limited in the exercise of its legislative power to the boundaries therein set forth. It therefore becomes a question of fact as to whether or not the slot machines are made available for operation within the territorial limits of the State of Florida. If the machines are made available for operation within the limits of the State they are subject to the licensing provisions, and otherwise not.

Chapter 17257, Acts of 1935, makes it unlawful "for any persons or persons, corporation or corporations, to set up for operation, operate, lease or to distribute for the purpose of operating any coin-operated device as defined in Section 2" of the Act, without obtaining a license therefor. Section 6 of the Act provides for the confiscation of all machines as defined upon which all taxes have not been paid and it seems clear from the statute that a slot machine locked up in a cabinet does not come within the licensing provisions, so long as it remains locked up in the cabinet while in the State of Florida.

March 17, 1936.

COIN OPERATED DEVICES (SLOT MACHINES) CANNOT BE MAINTAINED OR OPERATED IN A PLACE OF BUSINESS, EXCEPT HOTELS, WHICH PLACE OF BUSINESS IS WITHIN THREE HUNDRED FEET OF A SCHOOL OR A CHURCH

Dear Sir:

The Supreme Court of Florida in the recent case of *The State of Florida ex rel F. G. Bennett, Relator, vs. J. M. Lee, as Comptroller of the State of Florida, Respondent*, Opinion filed March 12, 1936, in sustaining the administrative construction of Section 12½ of Chapter 17257, Laws of Florida, Acts of 1935, held that a coin-operated device such as a slot machine, cannot be maintained or operated in a place of business, except a hotel, which place of business is within three hundred feet of a school or church.

SLOT MACHINES

February 19, 1935.

LOTTERIES—SLOT MACHINES

Dear Sir:

I am in receipt of your letter of the 17th instant, requesting that you be advised if it is legal for any one to operate slot machines where they are played with checks and mints.

In reply your attention is called to Sections 1081 and 1251, Compiled General Laws of Florida, 1927, prescribing a license fee for slot machines. Your attention is also called to Section 7444 of the same compilation providing a penalty for operating slot machines without a license. In this connection your attention is further called to the decision of our Supreme Court in the case of *State vs. Vasquez*, 49 Fla. 126, 38 So. 830, holding that a statute licensing slot machines under a Constitution prohibiting lotteries will not be construed to license the operation of a machine in which the element of chance largely predominates.

In reply to your specific inquiry I refer you to Section 7657, Compiled General Laws of Florida, 1927, providing a penalty for the keeping of gambling houses and, in connection with said Sections, the decision of our Supreme Court in the case of *Kirk vs. Morrison, Sheriff*, 108 Fla. 144, 146 So. 215, and quote you from the body of the opinion as follows:

"There is no law in Florida prohibiting the operation of 'slot machines' merely because they are slot machines. Slot machines per se are not unlawful, but they may be unlawful if designed to operate for the purpose of gaming or gambling. And slot machines may be so constructed as to constitute gambling devices per se, or they may become gambling devices by the manner in which they are actually used, although not intrinsically designed or constructed as gambling machines.

"A 'slot machine' is a gambling device where its operation is such that the player in any event will receive something, but stands a chance to win something in addition. Where it is alleged that a particular slot machine is a gambling device, the gist of the offense is the use that is made of the machine by the players for the purpose of winning something of value according to hazard or chance in the machine's manner of operation. A 'slot machine' is a gambling device per se when it is so constructed that in its ordinary operation it combines the element of chance with the inducement of being able to receive something of value for nothing by means of playing it according to directions."

Trusting that the above quotation from the decision of our Supreme Court gives you the information desired, I am

SLOT MACHINES

January 30, 1935.

GAMBLING APPARATUS—SLOT MACHINES—AUTHORITY OF
SHERIFF TO SEIZE, SECTION 7665, COMPILED
GENERAL LAWS OF 1927*Dear Sir:*

This is in response to your communication of January 17th, wherein you ask for the authority of the sheriff to seize slot machines pursuant to the provision of Section 7665, Compiled General Laws of 1927.

The slot machines which you describe in your communication are of the same type as those described in the case of *Kirk vs. Morrison*, 146 So. 215. A further description is not necessary except to specifically call attention to the fact that by the removal of a device commonly known as a "kick pin," which may be done with the fingers, the machine will return coins rather than tokens, and by a simple trick of blocking off the little lever in the mint chamber, the same can be made to operate without any mints in them.

Thus it is that these machines are so constructed that they may be operated as gambling devices.

The statute involved reads as follows:

"The sheriff or any peace or police officer, when any of the implements, devices or apparatus, commonly used for gambling purposes, are found in any house, room, booth, or other place, used for the purpose of gambling, shall seize the same and hold them subject to the discretion of the Court, to be used as evidence, and afterwards the same shall be publicly destroyed in the presence of witnesses under order of the Court to that effect."

As stated by our Supreme Court in *Kirk vs. Morrison*, *supra*, and reaffirmed in *Sweat vs. Daley*, 156 So. 720:

"Slot machines are not unlawful *per se* but may be unlawful and subject to seizure *if constructed* or permitted to be operated as *gambling devices* in violation of Section 7657, Compiled General Laws, Section 5499, Rev. Gen. St."

In the latter case the Supreme Court specifically held that a slot machine identical with the ones involved in your communication is not as a matter of law such a non-gambling device that Court of equity should undertake to enjoin the sheriff or other police officer of a county from seizing and holding such slot machine, subject to the order of a court of criminal jurisdiction, to be used as evidence against the owners or operators thereof, and afterwards disposed of as a court of criminal jurisdiction shall direct.

SLOT MACHINES

It is my opinion that as long as the sheriff acts in good faith and seizes such a device which is so constructed that it may readily be used as a gambling device, he will not be amenable to any liability, nor will the sureties on his bond, if he seizes such device in the execution of the duty imposed upon him by the above mentioned statute.

I also call your attention to the decision of the Circuit Court of Appeals of this Circuit in *Chambers vs. Bachtel*, 55 Fed (2d) 851, which was cited with approval in the *Daley Case*, *supra*. See also *Jackson vs. O'Connell*, 154 So. 697.

See also Annotation in 38 A. L. R. page 73, which collates the decisions of other jurisdictions, showing them to be virtually unanimous in their holdings that slot machines as such are not gambling devices per se, but that when such slot machines are so constructed that they may readily be converted into gambling devices, they come within the statutes prohibiting the keeping of such apparatus or implements.

October 7, 1936.

SLOT MACHINE ELECTIONS—PETITION—GENERAL ELECTION
BALLOT

Dear Sir:

Replying to your favor of October 5th, in which you ask to be advised whether the petition filed with the County Commissioners in referendum elections on licensing of Slot Machines should contain the names of 20% of the qualified electors, permit me to say Section 12-A of Chapter 17257 refers to and should be construed to mean that the petition should be signed by 20% of the *qualified electors*. A person unless exempt from payment of poll tax does not become a qualified elector by merely registering.

Replying to your second question, permit me to say, Section 12-A of Chapter 17257 does not expressly provide for a particular date for the filing of the petition. However, inasmuch as the law requires that names of candidates to be printed upon the ballot must be certified not later than 20 days previous to the day of election, it is my view that the petition containing 20% of the *qualified electors* should be filed not later than 20 days prior to the day of the election, and it would seem to be proper to hold that if the petition contains 20% of the electors who have qualified not later than 20 days previous to the day of the election that it would be sufficient.

The statute requires the County Commissioners to satisfy themselves that the requirements of the law relative to the petition have been complied with. In order to do this, it would be necessary for the Commission-

SLOT MACHINES

ers to count the signatures and check the registration books to see that the petitioners are qualified electors.

This office has been asked whether or not the "Slot Machine question" could be printed on the regular General Election ballot. In reply to that question we will say, that Section 362, Revised General Statutes of 1920, being Section 318 of the Compiled General Laws of 1927 as amended by Section 1 of Chapter 16877, Acts of 1935, reads as follows, to-wit:

"Whenever a constitutional amendment or *other public measure*, is submitted to the vote of the people, the substance of each amendment or other public measure shall be printed on the said ballot one time, after the list of candidates, followed by, "the phrase "for the amendment" and also by the phrase "against the amendment" with a sufficient blank space thereafter for placing of the symbol "X" to indicate the voters choice".

We think that the Section quoted provides sufficient authority for printing the "Slot Machine Question" on the regular General Election ballot for the reason that it is a "*public measure*".

October 7, 1936.

SLOT MACHINES—CONFISCATION AND DISPOSITION

Dear Sir:

In your letter of the 6th instant you state that you have on hand at various warehouses in the State hundreds of slot machines seized under the authority of Section 6 of Chapter 17257, Acts of 1935, and ask to be advised how you can legally dispose of these machines and avoid the further expense of storage.

Section 6 of Chapter 17257 mandatorily requires you to confiscate all machines as in said Act defined, upon which all taxes therein imposed have not been paid as therein provided. Confiscation is complete upon seizure under the Act for non-payment of the taxes thereby imposed and as therein provided; that is to say, when you take possession of any machine defined in the Act for the non-payment of the taxes required to be paid, the title thereupon passes from the owner and vests in the State of Florida.

The Act itself makes no specific provision as to the disposition to be made of the confiscated machine, but it is my opinion that the Legislature intended that the State should have the benefit of whatever value there is in the property so confiscated, and the only way the State can get this value out of the machine is by sale.

SLOT MACHINES

I advise, therefore, that you may proceed to sell at either public or private sale with or without notice in any manner which will produce the best results to the State.

October 29, 1936.

SECTION 12 A, CHAPTER 17,257, ACTS OF 1935; EFFECTIVE DATE
OF SLOT MACHINES REFERENDUM

Dear Sir:

I acknowledge receipt of your letter of the 27th inst., relative to the effective date of the slot machine referendums.

Section 12A of Chapter 17,257, Acts of 1935, provides that if the majority of the electors voting in such an election shall vote to cancel or recall the licenses or permits therefor given, then the Comptroller of the State of Florida and the Tax Collector of such County shall not thereafter grant any license for the operation of the machines and devices described in the Act.

It is my opinion that you should not license a slot machine after the voting has taken place. It is the votes of the people and not the returning of the officers that makes an election. Therefore, you should not continue to license the machines until the official result has been declared.

November 3, 1936.

SLOT MACHINES—CONFISCATION—DISPOSITION OF PROCEEDS

Dear Sir:

I acknowledge receipt of your letter of the 2nd instant, requesting my opinion as to the disposition to be made of the proceeds derived from the confiscation of coin-operated machines confiscated by you under Chapter 17257, and the money taken therefrom.

All such money, in my opinion, should be placed in the State Treasury to the credit of the General Revenue Fund.

November 16, 1936.

CHAPTER 17,257, LAWS OF FLORIDA, ACTS OF 1935; ENFORCEMENT
OF SLOT MACHINE ACT IN COUNTIES WHICH HAVE VOTED
THE SLOT MACHINES OUT

Dear Sir:

I acknowledge receipt of your letter in which you ask my opinion whether or not under Chapter 17,257, Laws of Florida, Acts of 1935, you

SLOT MACHINES

have authority to enforce the provisions of said Chapter in those Counties which by referendums under Section 12 A of the Act have voted that the licenses theretofore granted should be revoked.

Chapter 17,257, Acts of 1935, by Section 1 of the Act provides that it shall be unlawful for any person or persons to operate any coin-operated device as defined in Section 2 of the Act without first having obtained a license therefor.

Section 6 of the Act provides that the administration and enforcement of the Act shall be the duty of the Comptroller or his duly appointed agents.

Section 12 A of the Act provides that upon petition of 20% of the qualified electors of a County that the County Commissioners shall submit to the electors "the question of whether any permit or license theretofore granted for the operation of any of the machines or devices described in this Act shall be continued or revoked and if the majority of the electors voting on such question in such election shall vote to cancel or recall the licenses or permits theretofore given, then the Comptroller of the State of Florida and the Tax Collector of such County shall not thereafter grant any license for the operation of the machines and devices described in the Act. Provided, further that any County revoking such licenses shall not thereafter participate in any of the revenues derived under this Act.

You will note that Section 12 A provides only that the Comptroller and the Tax Collector should not grant any license after the referendum, if the electors should vote the machines out, and the further provision that the County where such licenses are revoked should not participate in the revenues derived under the Act.

Chapter 17,257, Acts of 1935, places the administration and enforcement of the Act upon the Comptroller and it is my opinion that the revoking by the electors of any County of the licenses theretofore granted has no further effect than to prevent the further licensing of machines in that County and the participation by the County of the revenues derived under the Act.

It is, therefore, my opinion that it is your duty to enforce the provisions of the Act in those Counties which have voted to oust the machines under Section 12 A of the Act.

SECTION 16

SMALL LOANS

June 3, 1935.

SMALL LOAN ACT. RIGHT OF LICENSEE TO CHARGE OR
CONTRACT FOR ATTORNEY'S FEE*Dear Sir:*

Replying to your letter of the 1st instant, as I construe Section 4011 of the Compiled General Laws of Florida 1927, which was originally enacted as Section 13 of Chapter 10177, Acts of 1925, known as the Small Loan Act, it prohibits licensees from making any charge for attorney's fees in connection with loans not exceeding the principal sum of \$300.00, on which interest is charged at the rate of three and one-half percentum per month. The Act in this respect reads as follows:

"In addition to the interest herein provided for, no further or other charge or amount whatsoever for any examination, service, brokerage, commission, or other thing or otherwise, shall be directly or indirectly charged, contracted for, or received, except the lawful fees, if any, actually and necessarily paid out by the licensee to any public officer for filing or recording or releasing in any public office, any instrument securing the loan, which fees may be collected when the loan is made or at any time thereafter."

The rule of construction is that when a statute prohibits the doing of a thing or things, whether by specific or general terms, but provides exceptions thereto, the exceptions contain all the permissible acts under the statute.

Therefore, the only exception contained in the statute is that the licensee may, in addition to the interest, charge for lawful fees as therein provided. This Act is a police regulation and is susceptible to this construction.

June 24, 1935.

SMALL LOAN ACT—RIGHT OF LICENSEE TO CHARGE OR
CONTRACT FOR ATTORNEY'S FEE*Dear Sir:*

I am just in receipt of a letter from Messrs. ———, Attorneys, of Miami, Florida, with reference to my letter to you under date of June 3, 1935, in which I expressed the opinion that Small Loan Companies, on loans not exceeding \$300.00, when the rate of interest charged is 3½% per month, cannot in addition thereto lawfully charge or contract for attorney's fees.

SMALL LOANS

They call my attention to the case of *Mason vs City Finance Company*, 151 So. 521, and ask how I reconcile my opinion with that of the Supreme Court in the cited case.

The question of the right of Small Loan Companies to charge or contract for attorney's fees in addition to interest at the rate of 3½% per month on loans not exceeding \$300.00, was not a part of the contract before the Court, so far as is disclosed by the quoted portion in the opinion, and was not present in the case then before the Court. Therefore, the statement of the Court in the cited case that Section 13 of the Small Loan Act does not prohibit agreements in Small Loan contracts, providing for the payment of attorneys' fees, etc., was dicta, and does not settle the question contrary to the opinion expressed in my letter to you.

I prefer, therefore, to stand upon the opinion expressed in my letter of the 3rd instant, until the Court decides otherwise in a case where the question involved is directly presented and considered.

February 1, 1935.

SMALL LOAN COMPANIES—CHAPTER 10177, ACTS OF 1925,
(SECTIONS 3999 ET SEQ., COMPILED GENERAL LAWS 1927)
NECESSITY OF LICENSE FOR COMPANY DISCONTINUING
LOANS BUT MAKING COLLECTIONS ON EXISTING
LOANS

Dear Sir:

This acknowledges your communication of January 30th, wherein you advise that the company had obtained its license under the provisions of the above mentioned statute and operated for several years; that it then decided to discontinue this business, and did not apply for a new license; that since such time said company has been collecting the loans made by it during the time it was licensed, but has made since such time and is now making no new loans.

You ask for my opinion as to whether or not it is necessary for the instant company to procure a license.

You will note that under Section 1 of the said Act (Section 3999, Compiled General Laws, 1927) no person, co-partnership, or corporation shall engage in the business of making loans to the value of \$300 or less, and charge, contract for, or receive a greater rate of interest than ten percent. per annum therefor, except as authorized by the said Act. Also in Section 8 thereof (Section 4006, Compiled General Laws, 1927) it is provided that no person, co-partnership, or corporation so licensed shall make any loan provided for by the said Act at any other place of business than that named in the license.

SMALL LOANS

By Section 13 of the said Act (Section 4011), it is provided that the licensee may loan any sum of money not exceeding in amount the sum of \$300, and may charge, contract for, and receive thereon interest at a rate not to exceed $3\frac{1}{2}$ per centum per month.

By Section 17 of said Act (Section 415, Compiled General Laws, 1927), it is provided that no person, co-partnership, or corporation engaged in the business of making loans of money except as authorized by the said Act, may charge, contract for, or receive any interest or consideration greater than 10 percent per annum upon the loan.

It is obvious from a study of the provisions of this Act that the occupation licensed is the business of making the loan, and charging the interest rate allowed. Both of these elements must concur in order to require the individual, co-partnership, or corporation to be licensed.

It is therefore my opinion that where a former licensee is no longer actually engaged in the business of making loans, but is merely liquidating past loans made at the time such licensee was licensed, a license under the said Act is no longer required.

SECTION 17

STATE AUDITOR

June 12, 1935.

AUDITORS, DEPUTY FOR DADE COUNTY

Dear Sir:

Chapter 14484, Laws of Florida, Acts of 1929, is progressive in its application. That is to say, its application is to be determined by the last State Census at the time the Act is sought to be applied and not by the last State Census at the time of its enactment.

This takes Dade County out from under the application of Chapter 14484, by reason of the 1935 State Census, and there is now no authority for the appointment of one additional Assistant State Auditor or Deputy State Auditor for Dade County, under authority of said Act.

As a matter of fact, the said Act now has no application to any county in the State. This being so, there is no necessity for passing on the Constitutionality of said Act.

SECTION 18

STATE LANDS
NO CORRESPONDENCE

SECTION 19

STATE OFFICERS AND EMPLOYEES

January 24, 1935.

EMPLOYEES—TO WHOM PAYMENT OF SALARY MADE IN CASE
OF DEATH*Dear Sir:*

I have your letter of the 17th instant, indicating that a single woman employee of that institution died there on January 11, 1935, and that the amount of salary due her at the time of her death is \$66.13. You further indicate that she has a Father, Mother, two Brothers and three Sisters living. You make inquiry if it is permissible to pay said amount to her father, taking receipt for same or if you should require a receipt from each member of her family.

In reply your attention is called to Sections 7068 and 7069, Compiled General Laws of Florida, 1927, reading as follows:

7068. "It shall be lawful for any employer, in case of the death of an employee, to pay to the wife or husband, and in case there is no wife or husband, then the child or children, provided the child or children be over the age of eighteen years, and in case there is no child or children, then to the father or mother, any wages that may be due said employee at the time of his death."

7069. "Any wages so paid under the authority of this Chapter shall not be considered as assets of the estate and subject to administration."

In view of the above statutes it appears that payment in such case may properly be made to the Father or Mother. If it seems advisable for any reason, it might be well to pay the same to the Father and Mother, both being present and signing a receipt therefor.

BIENNIAL REPORT OF THE ATTORNEY GENERAL
STATE OFFICERS AND EMPLOYEES

June 29, 1935.

STATE OFFICERS AND EMPLOYEES, SUBSISTENCE WHEN
TRAVELING

Dear Sir:

It is my opinion that the word "subsistence" as used in Section 1 of Chapter 16184, Acts of 1933, was intended to include lodging and meals.

I return herewith the letter of Judge ——— attached to your said letter.

SECTION 20

MISCELLANEOUS

June 16, 1936.

FAIRS AND EXPOSITIONS—COUNTY SUPPORT

Dear Sir:

This is in reply to your request for my opinion as to the legality of a proposed resolution for the use of counties in participating in the cost of an exhibit to be held in connection with a leading fair or exposition to be held in the State of Florida during the tourist season of 1936-37, and which further provides for the use of such exhibits at the Great Lakes Exposition to be held in Cleveland, Ohio, during the period of June 27 to October 4, inclusive, 1936. I have carefully considered the proposed resolution and statutes of Florida and the decisions of the Supreme Court of Florida construing same.

Section 6526, Compiled General Laws of Florida, authorizes the county commissioners of the various counties of the State of Florida to spend in their discretion such sums of money as they deem for the best interests of their counties in aiding the demonstration of agricultural, horticultural and livestock resources of their counties and in giving publicity to the advantages of agricultural, horticultural and livestock possibilities of their counties by providing for, aiding and assisting the exhibition and demonstration of such resources at and in connection with such fairs and expositions as are held in the State in accordance with the laws authorizing such fairs and expositions, including the offering and paying of premiums for such exposition of resources of the respective counties. Under the provisions of this statute the Boards of County Commissioners may lawfully act and adopt the proposed resolution, if such Boards of County Commissioners feel that it is for the best interest of their respective counties to further the purposes of the exhibition. This is entirely consistent with the opinions of the Supreme Court of Florida in the case of *Earle vs. Dade County*, reported in 109 Southern Reporter 331, and the case of *State vs. Thursby*, reported in 150 Southern Reporter, 252.

Under date of July 5, 1932, I rendered an opinion in connection with substantially the same question here presented. At that time I stated my opinion to be that there was no objection to the use of such exhibits as may be gathered together from funds provided by the counties under resolutions similar to the proposed resolution under consideration at the Century of Progress Exposition, so long as the same did not interfere with the purposes of the exhibit within the State of Florida. My opinion is that the incidental use of such exhibits at the Great Lakes Exposition would not be a violation of the law, so long as it in no wise interferes with the purposes within the State for which said money may be properly appropriated.

MISCELLANEOUS

May 8, 1936.

DIVORCE—RESIDENCE

Dear Sir:

I have your letter of the 4th instant the body of which reads as follows:

"I would like to have your opinion, under Section 4981 C. G. L. Florida 1927, and the Amendment to it known as House Bill 123, regarding the residence of a Plaintiff in the State of Florida, in order to obtain a divorce. That is, is it necessary that a party reside in any particular county the length of time required, or in other words, may a party be a resident in one County for the statutory period and go into another county and obtain a divorce."

Section 4981, Compiled General Laws of Florida, 1927, as amended by Chapter 16,975, Laws of Florida, Acts of 1935, (House Bill No. 123), reads as follows:

"RESIDENCE REQUIRED—In order to obtain a divorce the complainant must have resided ninety (90) days in the State of Florida before the filing of the bill of complaint."

Replying to your communication I beg to say that I am not authorized to deliver opinions except to State officers and State departments, but for your information I refer you to the ruling of our Supreme Court on the above statute in the case of McGowin v. McGowin, ——— Fla. ———, 165 So. 274, the 5th headnote of which reads as follows:

"Complainant, who had resided in state for two years continuously, could maintain suit for divorce in any county of state even though it was not county of his residence where his spouse did not reside in state when suit was instituted and where no property was involved in litigation (Comp. Gen. Laws 1927, Secs. 4219, 4980, 4981; Acts 1935, c. 16975)."

March 27, 1936.

RESIDENCE—SOLDIERS AND SAILORS

Dear Sir:

I am in receipt of your letter of the 19th instant making inquiry with reference to the Florida statutes relative to men absent in service with the army, navy, marine corps or coast guard retaining their legal residence in this State.

MISCELLANEOUS

In reply I beg to say I find no specific statute on the subject of your inquiry. However, legal residence in this State depends upon both fact and intention and any one having established his legal residence here would not lose such residence by absence in the above mentioned service unless upon leaving the State they have the intention or purpose to make some other State their permanent home.

March 24, 1936.

LAWS—LEGISLATIVE REQUIREMENTS

Dear Sir:

In your letter of the 9th instant you state that you have traced through the House and Senate Journals a bill passed through the last session of the Legislature, and that the only irregularity shown consists in the fact that after the bill was referred to a committee, there was no committee report made and no record of the bill being withdrawn from the committee, but that the bill later appeared on the calendar and was voted on and passed.

The Constitution does not require the Journals to show such committee reports, nor the withdrawal of bills from such committees. The presumption, therefore, is that those things were done which the Constitution requires to be done, to make valid the passage of bills. In other words, as to matters not required by the Constitution to be shown in the Journal, unless the Journal shows affirmatively to the contrary, the presumption is that every legislative step required by the Constitution was taken.

To state the matter in substance in the language of the Supreme Court of Florida, the silence of legislative journals upon any step in the enactment of the law is not affirmative evidence that such step was or was not taken, except in those particular respects wherein the Constitution mandatorily requires the Journals expressly to show the action taken. See *West vs State*, 50 Fla. 154, 39 So. 412.

March 20, 1936.

WEAPONS IN AUTOMOBILES

Dear Sir:

I am in receipt of your letter of the 6th instant making inquiry as to the legality of carrying a pistol through this State in an automobile for protective purposes only.

In reply I beg to refer you to Section 7202, Compiled General Laws of Florida, 1927, reading as follows:

MISCELLANEOUS

"Whoever shall carry around *with him, or have in his manual possession* in any county in this State, any pistol, Winchester rifle or other repeating rifle, without having a license from the county commissioners of the respective counties of this State, shall, upon conviction thereof, be punished by fine not exceeding one hundred dollars, or imprisonment in the county jail not exceeding thirty days: Provided, this section shall not apply to sheriffs, deputy sheriffs, city or town marshals, policemen, constables or United States marshals or their deputies as to the carrying of concealed weapons."

In my opinion the foregoing Section does not make it unlawful for the owner of an automobile to carry a pistol or rifle in his car for his own protection while driving. The law in question was intended to prohibit the carrying of arms on or about the person whether concealed or not without having a license so to do.

You will understand, however, that while an automobile owner may not be violating the law in having a pistol or rifle in his automobile, he is not thereby authorized to carry the same on or about his person, whether concealed or otherwise, unless he falls within one of the classifications provided for in the law exempting certain officers from the provisions of the statute.

February 8, 1936.

SEARCH AND SEIZURE—CONCEALED WEAPONS

Dear Sir:

Honorable ———, Traffic Inspector, Miami Police Department, has forwarded to me for reply your letter of the 12th ultimo making inquiry as to our State law relating to the searching of persons suspected of carrying arms.

In reply your attention is called to Section 22, Declaration of Rights of the Florida Constitution, reading as follows:

"The right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches, shall not be violated, and no warrants issued, but upon probable cause, supported by oath or affirmation, particularly describing the place or places to be searched and the person or persons, and thing or things to be seized."

Your attention is further called to Section 8504, Compiled General Laws of Florida, 1927, which is practically identical with the above quoted constitutional provision.

MISCELLANEOUS

Your attention is further called to Section 7198 of the above compilation, reading as follows:

"Officer to arrest without warrant. The carrying of concealed weapons is hereby declared a breach of peace, and any officer authorized to make arrests under the laws of this State is hereby authorized to make arrests without warrant of persons violating the provisions of the preceding section."

Your attention is also called to Section 8323 of the above compilation reading as follows:

"Officers to arrest without warrant. It shall be lawful for any sheriff, deputy sheriff, constable, city marshal, police officer or other executive officer in this State to arrest and take into custody, without a warrant, any person who, in the presence of such officer, violates any of the penal laws of this State, or of any municipality, and it shall be the duty of such officer to arrest without warrant and take into custody any person whom such officer has reasonable ground to believe, and does believe, has committed any felony, or whom he finds in the act of committing any felony or about to commit any felony, or engage in a fight or other breach of the peace."

Your attention is further called to the case of *Carlton et al vs State*, 63 Fla. 1, 58 So. 486, holding that the carrying of concealed weapons is a breach of the peace under the above quoted Section 7198, and authorizes an arrest without warrant.

Your attention is further called to the case of *Haynes vs State*, 71 Fla. 585, 72 So. 180, in which our Supreme Court held that in view of Sections 7198 and 8323, above quoted, relating to arrests without warrant, and of the evidence that the defendant had a pistol concealed on his person as well as a gun in his hands when he was approached by the deceased officer, and the fatal shooting followed, the giving of the following charge to the jury was not error:

"It is the duty of any sheriff, city marshal, or other police officer to arrest without warrant and take into custody any person whom such officer has reasonable ground to believe and does believe has committed any felony or about to commit a felony or engage in a fight or other breach of the peace, and carrying concealed weapons is a breach of the peace."

I quote you the fourth headnote in the case of *Haile vs Gardner*, 82 Fla. 355, 91 So. 376, as follows:

"No search or seizure is permissible under the law without a proper warrant duly issued, except as a reasonable search and seizure may be allowed by law as an incident to a lawful arrest."

MISCELLANEOUS

I also quote you the first headnote in the case of *Ellis vs State*, 92 Fla. 275, 109 So. 622, as follows:

"What constitutes a valid or reasonable search or seizure is a question to be determined by the courts, upon due consideration of the circumstances and manner in which the search or seizure is made by the officer."

November 9, 1935.

FERRIES—EXEMPTION FROM TOLL—MINISTERS AND
CLERGYMEN

Dear Sir:

Answering your letter of the 8th instant with reference to exemptions to Ministers of the Gospel from ferry tolls, I quote you Section 2752, Compiled General Laws of Florida, 1927, as follows:

"The militia of the State when actually going or returning from musters, or other militia services, shall be exempt from paying toll at any of the ferries and bridges in this State. Clergymen and preachers of the Gospel shall also be exempted from paying toll at said bridges and ferries."

October 30, 1935.

MORRIS PLAN BANKS—NAME SHOWING A CORPORATION NOT
REQUIRED

Dear Sir:

In your letter of the 22nd instant you ask whether a Morris Plan Bank is required to use in connection with its corporate name such word or words, abbreviation, affix or prefix therein or thereto, as will clearly indicate that it is a corporation, as required by Section 3 of Chapter 10096, Acts of 1925.

Chapter 16791, Acts of 1935, provides for the organization and incorporation of Morris Plan banks. They are required in organizing under the 1935 Act to file with the Secretary of State a certificate of incorporation, and to pay the same fees and comply with the procedure for organization and government of ordinary corporations for profit under the laws of the State, including the requirements for annual reports and franchise, fees and taxes.

There is nothing in Chapter 16791, which requires compliance with Chapter 10096, Acts of 1925, as to matters fully covered by the 1935 Act. The 1935 Act fully covers the requirement as to what shall be included

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in the name of Morris Plan Banks, and in my opinion this is all that is required. In other words, as I construe the two acts, Morris Plan banks organized and incorporated as provided by Chapter 16791 are not required to comply with sub-paragraph numbered 1 of Section 3 of Chapter 10096, Acts of 1925.

October 29, 1935.

LEGISLATURE PASSING BILLS VETOED AFTER ADJOURNMENT OF
FORMER SESSION

Dear Sir:

I acknowledge receipt of your letter of the 17th inst., in which you request an opinion as to whether or not House Bill 1392, Chapter and House Bill 1351 Chapter, both of the Legislature of 1933, which were vetoed by the Governor after the Session at which they were passed had adjourned, became and are now laws to be published by your office, by reason of the action taken thereon by the Legislature of 1933.

HOUSE BILL 1351

House Bill 1351 appears from the House Journals of 1935 to have been received with the veto message (page 112) and that said bill was passed by the House of 1935, the Governor's veto to the contrary notwithstanding, roll call showing on the final passage of the bill yeas 81 and nays 21 (see pages 113 and 128, House Journal, 1935). After passage by the House, the bill was transmitted to the Senate, where it was referred to the Committee on Public Roads and Highways (page 170, Senate Journal, 1935). The committee to which it was referred, in its report, recommended that the Governor's veto be not sustained and it was placed on the calendar of Veto Bills (page 640). Unanimous consent being given, it was taken up for consideration and passed the Senate, the roll call being yeas 38 and nays 0 (page 451, Senate Journal).

HOUSE BILL 1392

The veto message of House Bill 1392 was transmitted to the House of the 1935 Session of the Legislature, where the question recurred on the passage of the bill, the Governor's veto to the contrary notwithstanding, and on final action of the House, the bill passed the House, roll call showing yeas 54, nays 2 (see page 113, House Journal, 1935). After passage by the House, the bill was certified to the Senate and upon roll call passed the Senate by a vote of yeas 31, nays 0 (see page 156, Senate Journal, 1935).

Section 116, Compiled General Laws of Florida, provides that all original acts and resolutions passed by the Legislature and all other

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original papers acted upon thereby, together with the Journals of the Senate and the House, shall, immediately upon the adjournment thereof, be deposited with and preserved in the Office of the Secretary of State, by whom they should be properly classified and filed, etc. This section of the statute does not make it the duty of any particular person to transmit and deliver to the Secretary of State the original acts and resolutions and there is no constitutional provision or requirement that the original acts of the Legislature shall be transmitted by a particular office or officer as a part of the passage thereof. The statute above referred to is merely directory and the two acts in question, being shown by the House and Senate Journals to have been properly passed and now being in your custody, it is my opinion that they thereby became a part of the Acts of the Legislature of 1935 and should be published by you as such.

October 25, 1935.

COMMUNISM—SEDITION

Dear Sir:

I have your letter of the 19th instant relative to the question of controlling the dissemination of communistic propaganda and ideas in this State.

In reply I beg to say I do not find any statutes in this State relating to the subject of your inquiry, but I quote you Section 7133, Compiled General Laws of Florida, 1927, with reference to sedition, as follows:

"If any person shall excite an insurrection or sedition amongst any portion or class of the population of this State, or shall attempt by writing, speaking or by any other means to excite such insurrection or sedition, the person or persons so offending shall be punished by imprisonment in the State prison not exceeding twenty years."

October 11, 1935.

STATUTES—DISTRIBUTION TO OFFICERS

Dear Sir:

I have your letter of the 9th instant, referring to Section 1984, Compiled General Laws of Florida, 1927, enumerating the officials to whom your office is authorized to furnish without cost copies of the Acts of the Legislature, among which list of officers are State Attorneys. You state you have requests from Assistant State Attorneys for copies of Acts of the Legislature to be furnished them and you make inquiry

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if you should furnish such copies without cost to Assistant State Attorneys.

In reply I beg to say in my opinion you are not authorized under the law to furnish without cost to Assistant State Attorneys copies of the legislative Acts.

January 22, 1936.

ALIENS—OWNERSHIP OF PROPERTY

Dear Sir:

I have your letter of the 21st inst., making inquiry as to whether a Philippino or other alien may own property in Florida, particularly real estate.

In reply your attention is called to Section 18 of the Declaration of Rights of the Constitution of the State of Florida, reading as follows:

"Foreigners who are eligible to become citizens of the United States under the provisions of the laws and treaties of the United States shall have the same rights as to the ownership, inheritance and disposition of property in the State as citizens of the State, but the Legislature shall have power to limit, regulate and prohibit the ownership, inheritance, disposition, possession and enjoyment of real estate in the State of Florida by foreigners who are not eligible to become citizens of the United States under the provisions of the laws and treaties of the United States."

I find no legislative statute in pursuance of the above constitutional provision which prohibits the ownership of real estate by aliens. On the contrary I find that Chapter 16,183, Laws of Florida, Acts of 1933, known as the Probate Act, provides in Section 29 of said Act, now Section 5480 (6), Compiled General Laws of Florida, 1934 Supplement, as follows:

"An alien may devise and bequeath and inherit and transmit inheritance in real and personal property as if he were a citizen of the United States; and in making title by descent it shall be no bar to a party that the intestate or any ancestor through whom he derives his descent from the intestate is or has been an alien."

MISCELLANEOUS

August 15, 1935.

STATUTES—MISTAKE IN REFERENCE IN STATUTE TO ANOTHER
STATUTE—CHAPTER 17039, ACTS OF 1935 (SENATE
BILL NO. 937)*Dear Sir:*

This is in response to your communication of August 15, 1935, involving the above mentioned statute.

The title to said statute states that it is an act relating to the expenditure and disbursement of surplus moneys derived from gasoline taxes. Section 1 of the act provides in part as follows:

"When any moneys derived from the gasoline taxes under the laws of this State under provision of Chapter 14832, Acts of 1931, shall be placed to the credit, etc."

It happens that Chapter 14832, Acts of 1931, is the Act creating the State Racing Commission, and that the said statute should have referred to Chapter 15659, Acts of 1931.

Your specific inquiry is whether or not this error makes the statute unintelligible.

The rule is virtually uniform that a mistake in a statute in referring to another statute, where the real intent of the Legislature is manifest but would be defeated by a literal adherence to the terms of a mistake in reference, the mistake in reference will be regarded as surplusage, or will be read as corrected, and the legislative intent given effect.

It is, therefore, my opinion that we may reject the numeral term of reference to the 1931 Act as a mere redundancy, thereby removing any ambiguity in the said Act of 1935.

In support of this opinion see 59 C. J., p. 992 and Annotations in 5 A. L. R., 990, and 14 A. L. R., 274.

See also the following Florida cases:

Saunders vs Pensacola,
24 Fla., 226,
4 So., 801.

Haworth vs Chapman,
113 Fla., 591,
152 So., 663.

You are, therefore, entitled to construe the said Act of 1935 in the light of the foregoing opinion.

MISCELLANEOUS

July 23, 1935.

LAWS INCORPORATING STATE OR FEDERAL LAWS BY
REFERENCE

Dear Sir:

In your letter of the 18th instant you propound two questions:

(1) Does your State Constitution specifically prohibit the incorporation of law from any jurisdiction (State or Federal) by reference?

Our Constitution does not in specific words prohibit the incorporation of laws from other States or Federal laws by reference, but does by indirection. See Section 16 of Article III of the Constitution of Florida.

(2) Does your State Constitution prohibit the delegation of Legislative authority to State or Federal officials or agencies?

The answer to Question No. 1 is applicable to Question No. 2.

September 12, 1936.

EXTRADITION—HABEAS CORPUS—COSTS

Dear Sir:

I am in receipt of your letter of the 2nd instant stating that a bill had been filed with Clinch County for payment of the costs of the Clerk of the Circuit Court of Alachua County, Florida, in the case of State of Florida vs. Eddie Carter. You further state that Eddie Carter was arrested as a fugitive from Georgia and on requisition for his extradition he brought habeas corpus proceedings and that the Circuit Court on hearing remanded him to jail, after which Carter carried the case to the Supreme Court which resulted in the affirmance of the judgment of the lower Court and taxing costs against Carter. You further state that Clinch County will pay the costs if under any law of Florida said County is liable. You make inquiry if there is any rule or statute in Florida which would make the Court costs fall on Clinch County under these circumstances.

In reply I quote you Section 8499, Compiled General Laws of Florida, 1927, under the Chapter title "Extradition", reading as follows:

"No judge, justice of the peace, sheriff, constable or other officer shall be obliged to take any action in or about the arrest or detention of such alleged fugitive from justice, nor shall any sheriff or jailer be obliged to receive or keep in custody such alleged fugitive, without prepayment of the costs, to which the officer of whom the service is demanded shall be entitled, and

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in case of the sheriff or jailer, upon the commitment of such alleged fugitive from justice, the prepayment of the jail fees, including the cost of feeding the prisoner; and all such fees and costs shall be the same as are or may be provided for by law in like cases, and neither the State nor any county thereof shall be responsible or liable for any costs or expenses in the premises."

Under the above statute it appears that Clinch County is liable for all ministerial costs in connection with the extradition of the above party and the habeas corpus proceedings incident thereto. It would also appear that Clinch County upon the payment of the same may include said costs as a part of the cost that may be charged in the prosecution of said party.

August 3, 1936.

COMMISSIONERS OF DEEDS—SEAL—FORM

Dear Sir:

I am in receipt of letter from Honorable _____, your Executive Secretary, dated July 31, 1936, in which he attaches letter from Notaries Equipment Company of Philadelphia, Pennsylvania, and requests my advice as to the legal requirements for seals of Commissioners of Deeds appointed by you in other states.

Such commissioners are required to have seals. Otherwise such instruments as deeds, mortgages and other conveyances of real property would not be entitled to be recorded in this state; however, there is no statute prescribing any particular form. I think, however, it would be sufficient for such seals to show the name of the commissioner, together with a statement in substance as follows "Florida Commissioner of Deeds for the State of _____."

There is no requirement that the certificates of Commissioners of Deeds shall state the time of the expiration of their commissions.

March 21, 1936.

LEGISLATORS NOT ELIGIBLE TO OFFICES CREATED BY THEM

Dear Sir:

Section 5 of Article III of the Constitution of Florida provides that no member of the Legislature of the State of Florida shall during the time for which he was elected be appointed or elected to any civil office under the Constitution of this State that has been created or the emoluments whereof have been increased during such time.

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This would prohibit a Senator elected at the General Election of 1934 for a term of four years, from holding any office during said period of four years from the General Election of 1934, if the emoluments of such office were increased during the session of the Legislature of 1935.

This applies to the office of Assistant State Attorney, if the salary of such office was increased by the Legislature during said term of four years from the General Election of 1934.

October 11, 1935.

PAYMENT OF JUDGMENT AGAINST COUNTY FROM GENERAL
FUND

Dear Sir:

Replying to your request for an opinion on this subject, it is my opinion that a judgment against a county may and should be paid from the general fund of the county, unless of course the judgment was obtained on a cause of action against some particular fund.

July 28, 1936.

FEDERAL FUNDS DEPOSITED WITH STATE TREASURER—
WARRANTS FOR USE

Dear Sir:

This is in reply to your inquiry of July 22, in which you ask my opinion as to whether or not you have authority to draw a warrant against the Federal funds deposited with the State Treasurer under Part 3 of Title 5 of the Federal Social Security Act. You suggest that the right to expend such Federal funds may be contingent upon the State of Florida matching such funds.

I have studied the particular section of the Federal Social Security Act to which you refer and it is my opinion that the grant of such Federal funds is not contingent upon the State matching same. It would therefore follow that you would have authority to draw a warrant against said Federal funds in payment of the voucher to which you refer.

June 12, 1936.

DISTRICT BOARDS MAY EMPLOY SECRETARY AND OTHER
EMPLOYEES PROVIDED THEY MEET QUALIFICATIONS
FIXED BY STATUTE AND BY STATE BOARD OF
SOCIAL WELFARE

Dear Sir:

Receipt is acknowledged of your letter of June 5th which reads in part as follows:

"We have received a request from one of our District Boards for your opinion 'specifically defining the respective authority, duties and responsibility of the State Board and the District Board insofar as their separate administrative functions are concerned.' I believe that the request is intended to cover particularly the respective authority of the State and District Boards concerning the employment of personnel and the fixing of salaries and qualifications."

Paragraph 2 of Section 3, Chapter 17,477, Laws of Florida, Acts of 1935, generally referred to as "The 1935 Social Welfare Act of Florida" is the controlling law on the subject and reads as follows:

"Each District Board shall be the agent of the State Board and shall be responsible within its Welfare District for the administration of such public assistance and social welfare activities as may be delegated to it as provided for in Section 1 of this Act. All public assistance and social welfare activities of each District Board shall be subject to the supervision and control of the State Board. District Boards by and with the consent and approval of the State Board shall employ a Secretary who shall be known as the District Director of Social Welfare and such other clerical, administrative and trained or otherwise qualified social service personnel as may be necessary. All employees of said District Boards shall have such other qualifications not herein otherwise specified as may be required by the State Board and shall receive such compensation as may be approved by the State Board of Social Welfare. Provided however, that no district social welfare worker or employee shall receive as compensation more than \$200.00 per month from funds raised within the State."

It is my opinion that a District Board may employ, with the consent and approval of the State Board, a secretary "and such other clerical, administrative and trained or otherwise qualified social service personnel as may be necessary." The employees of a District Board must meet such qualifications as are fixed by The Social Welfare Act and such as are

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prescribed by the State Board. The compensation of all employees of a District Board must be approved by the State Board. In other words, a District Board may, with the consent and approval of the State Board, employ a secretary who shall receive such compensation as may be approved by the State Board, and a District Board may also choose its other employees but such employees must meet the qualifications fixed by the Social Welfare Act and such additional qualifications as are prescribed by the State Board.

It is the intention of the law to permit a District Board to employ a secretary and other employees subject only to the condition that all employees, including the secretary, meet the qualifications prescribed by law and by the State Board.

August 10, 1936.

INSANE PERSONS—FLORIDA STATE HOSPITAL—RESTORATION
TO CITIZENSHIP

Dear Sir:

This refers to your favor of August sixth, in which you state that the Board wishes to have my opinion as to the procedure to get the citizenship restored for persons who have been discharged from the Florida State Hospital. You say, "in other words, does this restore one who has been an inmate of the institution, or is some other procedure necessary?"

I beg to advise that Sections 5036 to 5039, inclusive, Compiled General Laws of Florida, provide the procedure necessary to restore a lunatic to judicial sanity. In other words, it is necessary that a bill be filed in the Court of Chancery where a person has been confined in the Florida State Hospital for the insane, or has been discharged therefrom, or is in the custody of any persons or committee, etc. The Statutes provide that the contents of the bill shall contain all the facts upon which a decree is granted. In other words, it requires a judicial proceeding for restoration to legal sanity.

October 31, 1935.

FLORIDA FARM COLONY—RELEASE OF INMATE

Dear Sir:

This refers to your favor of October 27, in which you present the problem of having in the Institution one _____, who was committed on May 7, 1924, from Duval County.

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It appears from your letter that the parents, in 1927, moved to Fitzgerald, Georgia.

There is nothing in our Statutes that provide a method whereby the State can relieve itself of a patient once it has been committed, as the State then, under the law, becomes guardian of the patient. I mean there is no way to relieve us of our obligation to the patient just because the parents or natural guardians have moved out of the State. I find no way we can relieve ourselves of this particular charge, unless the parents are willing to assume the care of the patient and take it out of the State. If the parents will do this, then the law will permit the board to release the child and let them carry it out of the State.

August 1, 1936.

FLORIDA STATE HOSPITAL—COMMITMENT BY CRIMINAL COURT
OF RECORD

Dear Sir:

I am in receipt of your letter of the 30th ultimo enclosing communication from Hon. ———, Superintendent Florida State Hospital, under date of the 29th ultimo with reference to commitments of a patient by the Criminal Court of Record of Palm Beach County.

In reply I beg to say that Section 3654 to 3658, Compiled General Laws of Florida, 1927, with reference to the question of procedure for trial of supposed insanity provide for the handling of such matters by the County Judge or Judge of the Circuit Court.

With reference to acquittal for cause of insanity in criminal trials, I refer you to Section 8399, Compiled General Laws of Florida, 1927, reading as follows:

"When a person tried for an offense shall be acquitted by the jury for the cause of insanity, the jury, in giving their verdict of not guilty, shall state that it was given for such cause, and thereupon, if the discharge or going at large of such insane person shall be considered by the court manifestly dangerous to the peace and safety of the people, the court shall order him to be committed to jail or otherwise to be cared for as an insane person, or may give him into the care of his friends, on their giving satisfactory security for the proper care and protection of such person; otherwise he shall be discharged."

Your attention is further called to the decision of our Supreme Court in the case of Register vs. State, 121 Fla. 9, 163 So. 219, in which the Court held that the above quoted Section is applicable to Criminal Courts of Record as well as the Circuit Court when dealing with criminal

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offenders specifically acquitted by a jury for the cause of insanity in a verdict of not guilty on that ground.

Complying with your request I am returning the said letter of _____, together with the judgment of the Court attached thereto.

April 30, 1936.

FLORIDA STATE HOSPITAL POLICE OFFICERS

Dear Sir:

Replying to yours of April 28th., permit me to say, it is my opinion that the Governor could, under the provisions of Section 104 of the Compiled General Laws of 1927, designate or appoint a Special Officer to protect life and property at the State Hospital, and that such officer could arrest a person committing a breach of the peace or destroying the State's property, but I doubt that such officer could do anything more than detain the person on the premises for delivery to a Sheriff, Deputy Sheriff, or Constable. In other words, I think the officers authority would be confined to the boundaries of the State's property.

June 24, 1936.

RECOMMITMENT OF PERSONS TO FLORIDA STATE HOSPITAL
AFTER PREVIOUS DISCHARGE

Dear Sir:

This is in reply to your letter of June 12th in which you request my opinion as to whether or not the Chief Physician of your institution has the power to revoke the discharge of former patients even though their release under such authority had occurred several years previous, thus making it possible to admit the patients upon the previous commitment without duplication of such procedure.

It is my opinion that the Chief Physician does not have that power. The statutes contemplate that the County Judge and Circuit Judge have the sole authority to order the commitment of insane persons to the Florida State Hospital. See Section 3657, Compiled General Laws of Florida, 1927. The power to commit an insane person to an institution is a judicial power which is vested by the Statutes and Constitution of Florida in the County Judge. See *ex parte Scudamore*, 55 Fla. 211, 46 So. 279.

In reply to your further inquiry concerning a patient whose legal sanity has been restored by the Court since his discharge from the Florida State Hospital, it is my opinion that all of the procedure out-

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lined in the Statutes would have to be followed to have that person adjudged insane and committed, without regard to any previous adjudication or commitment.

March 27, 1936.

FLORIDA STATE HOSPITAL—TRANSFER OF INSANE PERSON
FROM CALIFORNIA—RESIDENCE

Dear Sir:

I have your letter of the 19th inst., enclosing communication from Col. ———, Superintendent Florida State Hospital, with attached correspondence relating to transfer of ——— from California to the Florida State Hospital as an inmate. The question presented is whether or not Mrs. ——— is a legal resident of this State and her transfer from California to Florida State Hospital would be authorized by virtue of such legal residence.

The correspondence shows that Mrs. ——— and her husband came to Florida in 1924; that her husband died in 1933; that on July 3, 1934, she left Pensacola, Florida, stating that she intended to visit a while with a brother in Nebraska and from there expected to make her home in California where her two sons resided; that before Mrs. ——— left most of her friends understood that she intended making her home in California; that a party in Pensacola stated he is willing to make an affidavit that Mrs. ——— told him that she intended making her home permanently in California; that she was admitted to Stockton State Hospital in California on August 8, 1935, at which time she had been in California 8 months. The authorities seem to think she had not acquired legal residence in California by reason of the fact that she had not resided there 12 months.

Legal residence consists both of fact and intention. Length of residence is not a factor where the act and the intention to acquire a domicile concur and no definite period of time is necessary to create a domicile, unless the law so provides. This State and probably the other States of the Union have varying statutes with reference to residence requirements for electors for divorce proceedings and other specific regulations, but such statutes relate only to such particular fields and do not govern with reference to the general subject of legal residence. The correspondence, as above outlined, indicates clearly that Mrs. ——— left the State with the definite purpose and intention to make California her home and that she had been residing in California for 8 months before being received into the above California institution, which in my opinion is sufficient and conclusive evidence that she severed her legal residence in this State upon her departure therefrom with such definite purpose and intention. It, therefore, appears that the State of Florida

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is in no way obligated to authorize the transfer of Mrs. ——— to the Florida State Hospital for care and treatment.

March 20, 1936.

FLORIDA STATE HOSPITAL—POLICE OFFICERS—EMPLOYEES OF
GOVERNOR UNDER SECTION 104 C. G. L. 1927, CARRYING
ARMS AND MAKING ARRESTS

Dear Sir:

In your letter of March 9, 1936, you state under dates of September 4th and November 22nd, 1935, the Governor appointed 10 employees of that institution as State Peace Officers in addition to their other duties for the purpose of procuring and securing protection to life, liberty and property of the Florida State Hospital, as authorized by Section 104, Compiled General Laws of Florida, 1927.

You further state that you have approximately 750 employees and nearly 4,000 patients, presenting you with practically the same problems as a small city; that since the establishment of such force it has been called upon to function upon numerous occasions, it being their policy to make arrests and immediately turn the accused over to the local authorities with a proper charge placed against them; that they carry arms only when necessary and more particularly when chasing convicts who have escaped from your camps.

You further state that a rumour has reached you that the authority of these men may shortly be questioned as to the legality of their carrying arms and making arrests, for which reason you request my opinion as to their authority for carrying arms and making arrests.

Section 104, Compiled General Laws of Florida, 1927, reads as follows:

"The Governor is hereby authorized and empowered to employ as many persons as he in his discretion may deem necessary to procure and secure protection to life, liberty and property of the inhabitants of the State of Florida, also to protect the property of the State of Florida."

In this connection your attention is also called to Section 8612, Compiled General Laws of Florida, 1927, which provides among other things that the Board of Commissioners of State Institutions shall have the right to transfer temporarily State convicts from the State Prison Farm to other State institutions as can be used advantageously at such institution.

We will first consider the question as to carrying weapons and I refer you to Section 20 of the Declaration of Rights of the State Constitution reading as follows:

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"The right of the people to bear arms in defense of themselves, and the lawful authority of the State, shall not be infringed, but the Legislature may prescribe the manner in which they may be borne."

In this connection your attention is also called to Section 7197, Compiled General Laws of Florida, 1927, prohibiting the carrying of concealed weapons except by Sheriffs, Deputy Sheriffs, City or Town Marshals, Policemen, Constables or United States Marshals or their deputies.

Your attention is further called to Section 7202, Compiled General Laws of Florida, 1927, reading as follows:

"Whoever shall carry around with him, or have in his manual possession in any county in this State, any pistol, Winchester rifle or other repeating rifle, without having a license from the County commissioners of the respective counties of this State, shall, upon conviction thereof, be punished by fine not exceeding one hundred dollars, or imprisonment in the county jail not exceeding thirty days: Provided, this section shall not apply to sheriffs, deputy sheriffs, city or town marshals, policemen, constables or United States marshals or their deputies as to the carrying of concealed weapons."

You will note that the exemptions in the last above quoted Section are the same as the exemptions in Section 8323. This last quoted Section has the effect of prohibiting all persons not excepted therein from carrying weapons either concealed or not concealed on their persons. There may be some question as to whether this Section violates the above quoted Section 20 of the Declaration of Rights but under the rulings of our Supreme Court all statutes must be complied with by officers until declared invalid by the Courts.

Since the special employees mentioned in your letter do not appear to be exempted from the provisions of the above quoted statutes with reference to carrying concealed weapons without license, it appears to me that it would be well for such special employees to secure a license to carry arms under the provisions of Section 7203, Compiled General Laws of Florida, 1927, in order to avoid any question that might arise as to their right to carry arms.

With reference to making arrests without warrant I refer you to Section 8323, Compiled General Laws of Florida, 1927, which refers to certain officers or other executive officer of this State. I quote you said Section as follows:

"It shall be lawful for any sheriff, deputy sheriff, constable, city marshal, police officer or other executive officer in this State to arrest and take into custody, without a warrant, any person who, in the presence of such officer, violates any of the

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penal laws of this State, or of any municipality, and it shall be the duty of such officer to arrest without warrant and take into custody any person whom such officer has reasonable ground to believe, and does believe, has committed any felony, or whom he finds in the act of committing any felony or about to commit any felony, or engage in a fight or other breach of the peace."

Section 7396, Compiled General Laws of Florida, 1927, relates to certain arrests on Sunday without warrant by certain officers, "watchmen or other person" and relates as follows:

"Whoever is discovered in the act of wilfully injuring any fruit or forest trees, or committing any kind of malicious mischief on Sunday, may be arrested by any sheriff, deputy sheriff, constable, *watchman*, police officer or other person, and lawfully detained by imprisonment in the jail or otherwise until a complaint can be made against him for the offense for which he was arrested, and he be taken upon a warrant issued upon such complaint, but such detention without warrant shall not continue more than twenty-four hours."

Your attention is further called to 2 Ruling Case Law 446, Arrest 3, in which it is stated in England under the common law sheriffs, justices of the peace, coroners, constables and watchmen were entrusted with special powers as conservators of the peace with authority to arrest felons and persons reasonably suspected of being felons and that conservators of the peace also had the authority to make arrests without warrants in case of a misdemeanor which involved a breach of the peace committed in the presence of the officer making the arrest.

These special employees may possibly be considered as watchmen and as having authority as watchmen to make arrests. However, I do not know whether such view could be upheld in the Courts. In this situation it occurs to me that under said Section 104, Compiled General Laws of Florida, 1927, above quoted, the Governor would be authorized and empowered to commission such special employees as "State agents to protect the life, liberty and property of all officers, employees and inmates and all State property and to secure and prevent the escape of inmates and convicts on the grounds of the Florida State Hospital at Chattahoochee, Florida, in both Gadsden and Jackson counties and while in route from one part of said grounds to another". Such commission to be at the pleasure of the Governor. Such a commission and designation would vest the person designated not with general police power, but with all necessary power to protect and defend persons and property from abuse and trespass, even to the extent of forcibly expelling trespassers or forcibly seizing them and turning them over to a proper civil police officer to be proceeded against according to law, together with the right to secure and prevent the escape of inmates and convicts (See Attorney General's report, 1927-1928, pages 123).

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November 21, 1935.

FLORIDA STATE HOSPITAL—RESIDENCE

Dear Sir:

I have your letter of the 13th instant, the body of which reads as follows:

"Please let me have your opinion as to the minimum length of absence from this State by a person that would terminate Florida as being the legal residence, and relieve this State and institution from the responsibility of accepting him for care and treatment."

In reply I beg to say that a legal residence is often difficult to determine. It consists both of fact and intention. One may have his residence or domicile of origin in this State by virtue of having been born here. A resident of another State may move to this State and actually reside here with the intention or purpose of making this State his permanent home, in which case he would be a legal resident of this State by choice. For your general information I quote you head-notes 6 and 8 from the case of Warren vs. Warren, 73 Fla. 764, 75 So. 35. as follows:

"6. Legal residence or domicile may be acquired by one who coming from another state or country actually lives in this state with the intention of permanently remaining here. In such case a domicile by choice is established."

"8. Upon the question whether a person has established a domicile by choice in another state or country, the court will inquire whether such person not only lived in such other state or country, but whether the intention to permanently remain there was present when the removal occurred, or was entertained at all, and upon the question of such intention the court will examine into the acts and declarations of the party whose legal residence is inquired about, and such evidence will be weighed as it is upon any other question."

October 25, 1935.

FLORIDA STATE HOSPITAL—AUTOPSIES ON DEAD BODIES

Dear Sir:

I have your letter of the 22nd inst., making inquiry as to the law with reference to performing autopsies on dead bodies of patients at the Florida State Hospital.

In reply I beg to say that I find no statute on the subject of your inquiry.

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August 5, 1935.

FLORIDA STATE HOSPITAL—DISCHARGE OF PATIENTS

Dear Sir:

I acknowledge receipt of your favor of the 24th ult., in which you state:

"There was one, _____, committed to this Institution from Pinellas County by Court Order of John W. Bird, Judge of Circuit Court, December 13th, 1934, with a clause therein as follows:

"This patient is not to be released from the Florida State Hospital until ordered released by the Court'.

"It is the opinion of the writer that this is not a penal Institution, and that a patient may be furloughed or discharged at the discretion of the Medical Staff."

Replying, I beg to state that a circuit judge has authority under the law to commit to the State Hospital,

(a) One adjudged to be insane on proceedings instituted by a petition of five citizens, upon examination by two physicians and one other intelligent citizen;

(b) One against whom a criminal charge is pending and found by the judge to be unable to go to trial because of insanity;

(c) One convicted and sentenced for crime, becoming insane after conviction and sentence;

(d) One acquitted of crime because of insanity.

In either case (b) or (c), the judge of the court would retain jurisdiction over the person, so as to put the person on trial against whom a criminal charge is pending when restored to sanity or so as to enforce the sentence after return of the convict to sanity.

In the other two cases mentioned, (a) and (d), the patient would be under the jurisdiction of the Hospital, subject to discharge or parole by that Institution.

You do not state the circumstances under which the patient, _____, is held.

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July 7, 1936.

HEALTH—MOSQUITO CONTROL DISTRICTS

Dear Sir:

In your personal interview of this date you request my opinion as to whether under Senate Bill No. 176, Acts of 1929, a portion of a county can be formed into a mosquito control district.

Senate Bill 176, Acts of 1929, is Chapter 13570. This Act provides for the creation of a county into an anti-mosquito district, but there is no provision in this Act for the creation of such a district out of less than the entire county.

I am sorry to advise, therefore, that there is no authority for forming such district out of only a portion of a county.

February 6, 1936.

STATE INSURANCE ON LEASED PROPERTY

Dear Sir:

This is in reply to your inquiry as to whether or not buildings leased to the State, the lease requiring the lessee to keep the building insured, can be insured in the State Fire Insurance Fund created by Sections 1991-1993, Compiled General Laws.

It is apparent from reading the statutes creating the State Fire Insurance Fund that the legislative purpose sought to be accomplished thereby was to save the State insurance premiums. The provision of the statute defining the property to be so insured as "State property" does not, in my opinion, refer only to such property as the State owns in fee simple.

It is my opinion that the words, "State property," when considered in the light of the purpose to be served by the statute in question, are sufficiently comprehensive to include property which the State is under obligation to insure, even though the State does not hold the property in fee simple.

July 15, 1936.

BOARD OF COMMISSIONERS OF STATE INSTITUTIONS—CONVICT
MADE GOODS—STATE PRISON FARM*Dear Sir:*

I am in receipt of your letter of the 1st instant, the first paragraph of which reads as follows:

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"The Board at its meeting today agreed to extend the contract with Mr. _____ of Jacksonville, Florida, with reference to the manufacture of shirts, underwear, etc., at the Florida State Farm, Raiford, provided after investigation you do not find that it in any way conflicts with the new law governing prison manufactured articles."

In reply your attention is called to Section 8663, Compiled General Laws of Florida, 1927, authorizing the Board of Commissioners of State Institutions to establish industrial plants at various institutions. I find no later State statute on the subject of convict-made goods.

The Federal Act, Chapter 412 of July 24, 1935 is found in Supplement to 49 U. S. Code, Annotated, Sections 61 to 63. Section 61 makes it unlawful to transport goods, wares and merchandise manufactured by convicts or prisoners, except when on parole or probation, from one State to another where such goods are intended to be received, possessed, sold or used in violation of any law of such State. Section 62 requires the marking of packages showing name and location of the penal or reformatory institution where produced. Section 63 provides for a penalty and forfeiture for violation of the Act.

I do not find any State or Federal statute prohibiting the use of State convicts in such manufacturing enterprises, nor do I find any State or Federal statute prohibiting the sale or transportation of such articles when manufactured through the labor of State convicts in this State.

January 24, 1936.

FLORIDA EMERGENCY RELIEF ADMINISTRATION DOES NOT
HAVE AUTHORITY TO TRANSFER FISH PROCESSING PLANT
TO CLEARWATER

Dear Sir:

This will acknowledge receipt of your communication in which the following facts appear:

The Florida Emergency Relief Administration has erected and equipped upon land belonging to the City of Clearwater a Fish Processing Plant and now desires to transfer the title to the Plant for a nominal consideration to the City of Clearwater.

You request my opinion as to whether or not you, as administrator, have authority to make the transfer.

The money used in erecting and equipping the Plant was part of the money given by the Federal Government in connection with relief work in the State. See Title 15, Sections 723-28, U. S. C. A. I am unable to find any authority in the Florida Statutes which authorizes you to

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dispose of the property. It is my opinion that you, as administrator of the Florida Emergency Relief Administration, do not have authority to make the transfer of the Fish Processing Plant to the City of Clearwater.

I am of the opinion that you do have authority to lease the Plant to the City upon such terms and conditions as will carry out the purpose for which the Florida Emergency Relief Administration funds were given to the State. The only way for you to dispose of the property is under legislative authority and no such authority exists at this time.

December 6, 1935.

HARBOR MASTERS

Dear Sir:

I have your letter of the 4th instant requesting citations of all Florida statutes referring to Port Government, Harbor Masters and Pilots.

Complying with your request I am pleased to give you all citations which this office has been able to find relating to the subject of your inquiry. We find no 1935 Acts relating to such subject. All citations are from the Compiled General Laws of Florida, 1927, except Section 3872, which will be found in the 1934 Supplement to said compilation, as amended by Chapter 18,101, Acts of 1933.

I refer you to the following:

Stevedores: Sections 3860 to 3865 and 7997 to 7999.

Shipping Masters: Sections 3866 to 3868 and 8000.

Protection Ports and Harbors: Sections 3151 to 3152, 3869 to 3870, 5806 to 5816, and 7801.

Pilot Commissioners and Pilots: Sections 2016, 3871 to 3901 and 7991 to 7995.

Harbor Masters: Sections 3902 to 3916 and 7996.

September 11, 1935.

HARBOR MASTERS

Dear Sir:

I have your letter of the 9th inst., the first two paragraphs of which read as follows:

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"I am just in receipt of a letter addressed to me as Harbor Master from one of our largest property owners that he has some very valuable riparian rights, and that in front of his property are a number of old vessels and floating equipment which are liable to sink and damage his property.

"He wants me as Harbor Master to have these vessels moved, and the purpose of this letter is to find out what authority I would have in a case of this kind."

In reply I beg to say after reading the statutes pertaining to the powers and duties of Harbor Masters, I find no authority vested in you as Harbor Master to comply with said request.

September 6, 1935.

INSANE PERSONS

Dear Sir:

This refers to your favor of September fifth, enclosing copy of letter from one Mrs. ——— of 153 East 61st Street, Chicago.

I gather from this letter that Mrs. ——— can obtain a discharge of her sister from the State Hospital in Chicago, that then she expects to bring her to Florida and take care of her in her own home; that is the home of Mrs. ———.

As a matter of law, there is no way to prevent Mrs. ——— from bringing her into the State of Florida and keeping her in her own home, so long as her sister does not become dangerous to society or inflict danger to others.

July 26, 1935.

CHAPTER 14765, ACTS OF 1931—HOUSE BILL NO. 649, CHAPTER 17254, ACTS OF 1935—SERVICE OF PROCESS ON NON-RESIDENT MOTOR VEHICLE OPERATORS—SECRETARY OF STATE

Dear Sir:

This acknowledges your communication of the 25th, wherein you inquire whether the above mentioned Act of 1935 repeals the above mentioned Act of 1931, and if so, whether it is necessary for you to make any return on the process served on you as agent of the defendant in cases covered by such acts.

It is my opinion that the said Act of 1935 constituted a complete revision of the entire subject matter covered by the said Act of 1931,

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and that therefore the same constituted a repeal of said 1931 Act. You are, therefore, to follow solely the provisions of the said 1935 Act, which contains no provision for any return by you.

October 18, 1935.

CHAPTER 17254, ACTS OF 1935—SERVICE OF PROCESS ON
NON-RESIDENT MOTOR VEHICLE OPERATORS—
SECRETARY OF STATE

Dear Sir:

This acknowledges yours of the 15th, in which you inquire as to your duty after the service of process upon you pursuant to the provisions of Section 2 of Chapter 17254, Acts of 1935.

I beg to advise that the only duty imposed upon you is that provided for in Section 4, to-wit: To keep a record of all such processes served upon you which shall show the day and hour of service.

I can see no objection to your giving a receipt for the process served upon you or in any other manner acknowledging that you have received the same, but such is not required by the statute itself.

Trusting this answers your inquiry, and returning herewith the letter enclosed in your communication, I am

July 2, 1935.

SALARIES, CHAPTER 15859 OF 1933

Dear Sir:

This refers to your favor of July 1, in which you make inquiry as to whether or not the 1933 salary act, to-wit Chapter 15859, Laws of Florida, Acts of 1933, is still effective as to the salaries of all officers and persons therein named.

I beg to advise that it is my opinion that this act is still effective and does control each and every of the officers therein named. It is true that the appropriation bill of the 1935 Session of the Legislature carried lump sums, which, when broken down in the light of the recommendations of the Budget Commission, might indicate that it intended an increase in salaries, but, unfortunately, the appropriation bill cannot, in my opinion, repeal or modify the above mentioned salary act of 1933; furthermore, there would be the practical impossibility of applying the appropriation act of 1935 by any increases, because it would be impossible to tell what increases to be made, or what amount.

This probably is very unfortunate in some instances, but certainly, so far as the salary act of 1933 is concerned, this controls.

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February 21, 1935.

FLORIDA STATE HOSPITAL—PAYMENT OF FEES TO SHERIFFS
AND PEACE OFFICERS APPREHENDING ESCAPED AND
FURLOUGHED PATIENTS

Dear Sir:

I am in receipt of your letter of the 15th instant, stating that you have several bills from various Sheriffs and Peace Officers covering mileage, arrest, commitment, release and board for escaped and furloughed patients and making inquiry whether these bills are proper charges against the State.

In reply I beg to say there appears to be no statute on the subject of your inquiry. However, since these patients are committed to the Florida State Hospital in the first instance for care and maintenance by the State, it would appear that such services for apprehension may be considered as a part of the necessary care and maintenance of said patients, subject to the approval of the Board of Commissioners of State Institutions, which Board, under the statutes, is given control of said institution.

February 9, 1935.

FLORIDA STATE HOSPITAL

Dear Sir:

This refers to your favor of February eighth, relative to biennial report.

The Constitution of the State of Florida requires that each officer of the administrative departments shall make a full report of his official acts and of the receipts and expenditures of his office and all the requirements of the same at the beginning of each regular session of the Legislature, or whenever the Governor shall require it, and such reports shall be laid before the Legislature by the Governor at the beginning of each regular session.

It is my opinion that it will be your duty to get out such biennial report, as has been the practice and as is required by the Constitution.

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January 30, 1935.FLORIDA STATE HOSPITAL—CONTRACT WITH TOWN OF RIVER
JUNCTION RELATIVE TO WATER SUPPLY, DATE OF
FEBRUARY 19, 1929*Dear Sir:*

This is in response to your communication of January 1, 1935, relative to the above matter.

I have examined a copy of contract under date of February 19, 1929, between the Board of Commissioners of State Institutions and the Town of River Junction, and it is my opinion that the contract calls for payment by the said Town of River Junction for a minimum of thirty thousand gallons of water per day, and that the town should be charged with such minimum, even though the amount actually furnished is not equal to such minimum.

Trusting this answers your inquiry, I am

January 24, 1935.

STATE OF FLORIDA—CONVEYANCE OF PART OF LANDS IN KEY
WEST ON WHICH IS LOCATED NATIONAL GUARD ARMORY*Dear Sir:*

I am in receipt of your letter of the 16th instant, enclosing copy of warranty deed from the County Commissioners of Monroe County to the Governor of Florida and his successors in office covering certain lands in the City of Key West, conveyed in consideration of the sum of \$10,011.30 and in accordance with the provisions of Chapter 5283, Laws of Florida, Acts of 1903, authorizing the purchase thereof by the State.

You state that it appears inadvertently a citizen of Key West in building a dwelling on an adjoining lot encroached about five feet on the Armory lot; that to move his house would be a great hardship on him and inasmuch as the dwelling has been standing there for many years, even before the Armory was erected, without any inconvenience to the State, the Governor has consented to convey the five feet in question to the home owner and authorizes you to apply for information as to proper procedure.

In reply your attention is called to 59 C. J. 166, States, 280, reading as follows:

"State property cannot be sold or disposed of except by authority of law, but, subject to constitutional restrictions, the state, like any individual owner of property, may convey its

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property in any way it sees fit, and its grant may be express or by necessary implication. The power to dispose of State property is vested in the Legislature, which may make provision therefor by statute, and the statutory provisions must be complied with or the sale will be void."

In view of the above quotation and the further fact that I find no statute authorizing the above mentioned sale, I beg to say that the proper procedure in such instance would be to secure an Act of the Legislature authorizing such conveyance, after which conveyance may be made in strict accordance with such statute.

January 8, 1935.

EVERGLADES DRAINAGE DISTRICT BONDS, REGISTRATION

Dear Sir:

I am in receipt of your letter of the 3rd instant, enclosing a letter from Drysdale & Company, 71 Broadway, New York City, under date of December 28, 1934, requesting you, as State Treasurer, to register certain Everglades Drainage District bonds issued on July 1, 1921, part of which mature July 1, 1937, and the other part of which mature on July 1, 1938. You make inquiry if it is in order for the State Treasurer to register these bonds.

The said bonds recite that they are issued under Chapter 8456, Laws of Florida, Acts of 1913, as amended by Chapter 6957, Acts of 1915, as amended by Chapter 7862, Acts of 1919, as amended by Chapter 8413, Acts of 1921. Section 22 of Chapter 6456, Acts of 1913, which does not appear to have been amended at the time of the issuance of said bonds reads as follows:

"Whenever the owner of any coupon bond issued pursuant to the provisions of this Act shall present such bond and all unpaid coupons thereof to the State Treasurer of the State of Florida with a request for the conversion of such bond into a registered bond, such State Treasurer shall cut off and cancel the coupons of any such coupon bond so presented, and shall stamp, print or write upon such coupon bond so presented either upon the back or the face thereof as may be convenient, a statement to the effect that said bond is registered in the name of the owner and that thereafter the interest and principal of the said bond are payable to the registered owner. Thereafter and from time to time any such bond may be transferred by such registered owner in person or by attorney duly authorized on presentation of such bond to the State Treasurer and the bond again registered as before, a similar statement being stamped, printed or written

MISCELLANEOUS

thereon. Such statement stamped, printed or written upon any such bond may be in substantially the following form:

“(Date, giving month, year and day).

This bond is registered pursuant to the statutes in such case made and provided in the name of (Here insert name of town), and the interest and principal hereof are hereafter payable to such owner.

State Treasurer.’

“If any bond shall have been registered as aforesaid, the principal and interest of such bond shall be payable to the registered owner. The State Treasurer shall enter in the register of said bonds kept by him pursuant to the provisions of this Act, or in a separate book, the fact of the registration of such bonds, and in whose name respectively, so that said register or book shall at all times show what bonds are registered and the name of the registered owner thereof.”

The said bonds contain a recital providing for their registration under language similar to that above quoted in Section 22.

Under the provisions of the statutes under which said bonds were issued, as well as the terms of the said bonds, as recited therein, it appears that they are subject to registration under said Section 22.

I notice in the last paragraph of the letter of Messrs. Drysdale & Company that they request a check for the back interest on said bonds. Since I understand you are not in position to pay out any of the funds which you may have on hand to the credit of the Everglades Drainage District on account of certain suits pending and, therefore, would be unable to comply with the request of Messrs. Drysdale & Company to forward your check for back interest on said bonds, I will suggest before registering said bonds and removing all coupons therefrom, as required by the statute, that Messrs. Drysdale & Company be advised in the premises in order to ascertain if they still desire registration which will necessitate your holding all coupons cut off from the bonds, including those coupons already past due, until you are at liberty to make payments from the Everglades Drainage District funds.

Complying with your request, I am returning herewith the letter of Messrs. Drysdale & Company.

MISCELLANEOUS

December 16, 1935.

COMMERCIAL FEEDING STUFFS LAW (CHAPTER 5452, AS
AMENDED BY CHAPTER 5661, ACTS OF FLORIDA OF 1927)—
FORM OF ANALYSIS TAG*Dear Sir:*

This will acknowledge receipt of your letter of December 11, 1935, with enclosures.

You have submitted with your said letter proposed form of tag or label as follows:

Net Weight 100 lbs.

D. V. BASE

"The Foundation for a Good Feed"

Thirty-two Important Food Items

Containing

DAWE'S VITAMELK CONCENTRATE

Rich in Vitamins

A, B, C, D, E, and G

Also rare minerals in organic combination with
milk proteins

GUARANTEED ANALYSIS

Protein, minimum	44.0%
Fats, minimum	4.5%
Fiber, maximum	4.0%

CARBOHYDRATE

NITROGEN FREE EXTRACT31.5%

Ingredients: D. V. BASE—which contains, Oil of Wheat Embryo, Extract of Cod Liver Oil, Extract of Rice Polishings, Dried Yeast, Dried Egg Yolk, High Lactine Buttermilk, Iodine 0.01, Sulphur 0.05, Copper Sulphate 0.01, Nickel Sulphate 0.01, Iron Sulphate 0.05, Maganese Sulphate 0.05, Calcium Gluconate 0.05, Sodium Citrate 0.08, Mono-Potassium Phosphate 0.02, and Dried Skim Milk, Milk Sugar Feed, Fish Meal, Soybean Oil Meal, Corn Gluten Meal, Cod Liver Meal, Wheat Germ Meal, Corn Germ Meal, O. P. Linseed Meal, Ground Oat Groats, Kelp, Dried Oranges, Dried Spinach, Dried Tomatoes, Dried Molasses, Dried Crab Meal, Dehydrated Alfalfa Leaf Meal."

and request my opinion as to whether or not you may, under the Commercial Feeding Stuffs Law above referred to, require the deletion there-

MISCELLANEOUS

from of the printed matter thereon appearing immediately after the word "Base" and immediately preceding the words "Guaranteed Analysis".

Section 3 of the law above referred to (Section 2057 R.G.S. 1920; Section 3257 C.G.L. 1927) provides that every bag, barrel or other package of commercial feeding stuff manufactured, sold in or imported into this State, shall have securely attached a tag or label, and plainly printed thereon:

" * * * the number of net pounds of commercial feeding stuffs in the package; the name, brand, or trade-mark under which the commercial feeding stuff is sold; the name and address of the manufacturer, and the guaranteed chemical analysis, stating the percentage of fat, the percentage of protein—allowing one per centum of nitrogen to equal 6.25 per centum of protein—the percentage of sugar and starch contained therein, these constituents to be determined by the methods adopted by the Association of Official Agricultural Chemists of the United States, and the ingredients from which it is compounded; * * *"

I am of the opinion that the statement in said section contained, as to what shall appear upon the tag or label, discloses an intent that no other matter shall appear thereon; and that, therefore, you are authorized under the law to require the deletion of the impertinent matter above referred to, particularly since none of this matter purports to refer either to the name, brand or trade-mark under which the commercial feeding stuff is sold or to the *ingredients* or constituents thereof. The statute, in my opinion, does not authorize a statement on such tag or label other than as specifically provided for in the statute.

Trusting that this will answer your inquiry, and returning herewith all enclosures transmitted by you to us, I am

November 22, 1935.

COMMERCIAL FERTILIZER—DISTRIBUTION OF FEES COLLECTED

Dear Sir:

I have your letter of the 22nd instant referring to Section 9 of Chapter 16,999, Laws of Florida, Acts of 1935, amending Section 2402 and 5710, Revised General Statutes, 1920, being Sections 3811 and 7933, Compiled General Laws of Florida, 1927. Your letter refers to that part of Section 9 reading as follows:

" * * * Every manufacturer or agent for commercial fertilizer shall pay to the State Treasurer a fee of 25c per ton for commercial fertilizer offered for sale in the State of Florida, except raw ground phosphate rock, soft phosphate, colloidal

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phosphate, phosphatic clays and all other untreated phosphatic materials, peat or humus, and hydrated lime and limestone when sold or used for agricultural purposes, on which materials the fee shall be 10c per ton. 5c out of each fee so paid shall be placed into a special fund and not into the general inspection fund of the State, and said special fund shall be available to the Commissioner of Agriculture for use in enforcing this law. * * * "

You make inquiry if 5c out of each fee directed to be placed into a Special Fund for use of the Commissioner of Agriculture in enforcing the law applies to the 25c fee per ton for commercial fertilizer and also the 10c fee per ton required on phosphate rock and other materials.

In reply I beg to say under the language of said statute providing for 5c out of each fee to be placed into a Special Fund for use of the Commissioner of Agriculture in enforcing the law the 5c fee applies to the 25c fee per ton on commercial fertilizers and also on the 10c fee per ton for phosphate rock and other materials.

November 18, 1935.

COOPERATIVE INSPECTION FUND—DISPOSITION OF SURPLUS—
SECTION 2008 C.G.L. 1927—SECTION 3, CHAPTER 12292,
ACTS OF 1927

Dear Sir:

This is in response to your inquiry of November 15th, in which you advise that you have in your possession some \$4000.00 which is the State's part of the surplus accumulated from fees paid to the Cooperative Inspection Fund in your department for Federal-State shipping point inspection. You ask my opinion as to whether or not this may be placed in the General Inspection Fund of the Department of Agriculture.

It is my opinion that Section 3 of Chapter 12292, Acts of 1927, now appearing as Section 2008, Compiled General Laws 1927, governs. This provides that all fees for inspection conducted by you and your assistants shall be deposited in a fund to be known as "The Cooperative Inspection Fund", and that all expenses for inspection service shall be paid therefrom upon your approval and direction.

This section is part of a general Act of 1927 which had to do with this cooperative inspection service. It is my opinion that it was the intent of the Legislature to provide for a separate and distinct fund, and that Chapter 11998, Acts of 1927, Section 3, providing for the general inspection fund, which amended Chapter 10149, Acts of 1925, and which now appears as Section 222, C.G.L., 1927, has no effect upon this separate cooperative inspection fund.

MISCELLANEOUS

You should, therefore, keep intact the cooperative inspection fund, and the only means for a disposition other than as directed by existing law, will be by an Act of the Legislature.

August 23, 1935.

FARM MARKETING

Dear Sir:

I have your inquiry, under date of the 20th inst., in which you ask my opinion as to whether or not an association of farmers can collect their crops and have one of their members haul them to town and sell for the whole group without being subject to payment of a license.

It is my opinion that where the produce grown by each farmer and so sold is credited to his separate account, and all the proceeds of the sale of his produce go to him, and where the crops of the several farmers are not pooled and the association takes no profit for the hauling and marketing of the crops collectively, there could be no payment of a license lawfully exacted, as crops when sold by the farmer producing them are exempt from the payment of a license, provided in the Acts of 1915, Compiled General Statutes 1270, and Chapter 13874, Acts of 1927, Section 2.

August 5, 1935.

COMMISSIONER OF AGRICULTURE—ISSUING BONDS FOR STATE
MARKETING AND COOLING PLANT

Dear Sir:

I am in receipt of your letter of the 22nd ultimo, enclosing a letter under the same date from Mr. A. A. Corcoran, Palatka, Florida, with reference to the building of a State Marketing and Cooling Plant at Palatka to be erected with funds proposed to be secured from the Federal Government, for which bonds must be issued. Inquiry is made as to the authority of the Department of Agriculture to issue bonds for such purpose to the Federal Government.

In reply I beg to say under the provisions of Article IX, Section 6, of the State Constitution, it is my opinion that the Department of Agriculture would not be authorized to issue such bonds.

MISCELLANEOUS

June 7, 1935.

MILK—CHAPTER 14,762, ACTS OF 1931

Dear Sir:

I am in receipt of your letter of this date enclosing letter from _____, making inquiry if it is lawful to standardize milk of a higher butter fat to a 3½% butter fat content.

In reply your attention is called to Section 1 of Chapter 14,762, Acts of 1931, containing the following language:

"That for the purpose of this Act the standards for milk and milk products shall be as follows:

"MILK is hereby defined to be whole, fresh, clean, lacteal secretion obtained by the complete milking of one or more healthy cows, properly fed and kept. * * *"

Your attention is further called to Section 2 of the same Act containing the following language:

"No person, firm, association, or corporation by him or itself of his or its agents, or servants, shall sell, offer for sale, expose for sale, or have in his or its possession with intent to sell, any product herein defined by this Act that does not conform to the standards of the definitions of milk and milk products contained in this Act. * * *"

Under the above quoted statutes it is my opinion that it would not be lawful to standardize for sale milk of a higher butter fat to a 3½% butter fat content.

Enclosed I am returning letter of Mr. _____ and attached papers.

July 18, 1935.

BROWARD COUNTY PORT AUTHORITY—CHAPTER 15107, ACTS OF
1931—CHAPTER 17506, ACTS OF 1935—DUTY OF
COMPTROLLER TO MAKE AUDIT

Dear Sir:

This is in response to your communication of July 3, 1935, wherein you inquire whether or not, under Chapter 17506, Acts of 1935, you are under any duty to make, or have made, an audit of the books of account of the Broward County Port Authority.

Chapter 15107, Acts of 1931, Section 12, placed this duty upon you; but the said Act of 1935 abolished the old Port Authority and created a new one, and by Article 22 of said Chapter 17506 it is provided:

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"At least once a year the books of account of the Port Authority shall be audited, and such audit filed in the office of the Port Authority * * * and the expense of such audit shall be paid out of the Administration Fund."

Section 10 of Article IX of the said Act of 1935 grants the Port Authority power to employ such persons as may be necessary.

I therefore fail to find either authority or duty on your part in the said statute of 1935 to make, or have made, the audit involved.

July 5, 1935.

STATUTES, EFFECTIVE DATE

Dear Sir:

Replying to your letter of the 3rd instant, I beg to advise that Section 3 of Senate Bill No. 1035, Chapter 16963, Acts of 1935, provides: "This Act shall take effect immediately upon its becoming a law".

The Act was filed in the office of Secretary of State June 10, 1935, without the approval of the Governor.

Section 28 of Article III of the Constitution of Florida provides that every Bill passed by the Legislature shall become a law unless vetoed by the Governor within five days (Sunday excepted), unless the Legislature, by its final adjournment, prevent such action, in which case it shall become a law unless vetoed by the Governor within ten days after final adjournment.

June 10, 1935, was the last day under the Constitution for vetoing Senate Bill 1035. It, therefore, by its own provisions, under the terms of the Constitution, became a law June 11, 1935, and became effective on that date.

April 12, 1935.

JURORS—MEALS AND LODGING FOR TALESMEN

Dear Sir:

I am in receipt of your letter of the 11th inst., making inquiry if Section 4475, Compiled General Laws of Florida, 1927, requires the State of Florida to pay for meals and lodging of talesmen when the Sheriff is ordered to furnish same by the Court.

Said Section 4475 reads as follows:

The sheriff when required by order of the court shall provide juries with meals and lodging, the expense to be taxed against and paid by the State."

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In my opinion said Section applies only to juries after being accepted and does not apply to persons merely under summons for jury duty.

April 19, 1935.

EXTENT OF HOMESTEAD PROPERTY NOT REDUCED ON ACCOUNT
OF ITS BEING SUBSEQUENTLY INCLUDED WITHIN THE
LIMITS OF AN INCORPORATED CITY OR TOWN
UNLESS THE OWNER CONSENTS THERETO

Dear Sir:

I have your request for my opinion upon the following question:

In applying Section 7 of Article X of the State Constitution, known as the Homestead Exemption amendment, is the quantity of land of a rural homestead reduced to one-half acre when the property is subsequently included within the limits of an incorporated city or town?

The homestead referred to in Section 7 of Article X of the State Constitution is "the homestead as defined in Article X of the Constitution of the State of Florida". Section 1 of Article X of the State Constitution fixes the extent of a homestead as being "one hundred and sixty acres of land, or the half of one acre within the limits of an incorporated city or town". Section 5 of Article X of the State Constitution provides that "no homestead provided for in Section 1 shall be reduced in area on account of its being subsequently included within the limits of an incorporated city or town, without the consent of the owner".

Construing the above referred to Sections of the Constitution together, it is my opinion that the extent of the homestead can only be reduced on account of being subsequently included within the limits of an incorporated city or town by the owner thereof consenting to the property being included therein. *Gallagher versus Smiley*, (Neb.) 44 N. Y. 166. If the owner consents to the property being included within the limits of an incorporated city or town, the extent of the homestead property is thereupon reduced to not to exceed the half of one acre as set forth in Section 1 of Article X of the State Constitution.

In the case of *Morgan versus Bailey*, 90 Fla. 47, 105 So. 143, the Supreme Court of Florida considered the following facts: The adopted daughter of the deceased filed a bill to partition certain property and alleged: That the property was the homestead property of the deceased at the time of his death; That the deceased left a will in which he undertook to devise the homestead property to his wife; That the widow did not within one year from the issuance of the letters testamentary elect to take a child's part of the estate; That the property was the

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homestead of the deceased long before and at the time it was included within the limits of the incorporated town of Mateo, and that including the property within the limits of the town did not reduce it in extent. A demurrer was sustained to the bill and an appeal was taken therefrom. The Supreme Court in reversing the case said: "Under the allegations of the bill, proof that the interest of the decedent in the property described was the homestead of himself and family is admissible, and there was error in the order sustaining the demurrer".

In discussing the case, the Court said: "The homestead is not reduced in area without consent of the owner, by reason of its being subsequently included within the limits of an incorporated city or town". This statement of the Court must be considered in connection with the facts of the case. The allegations of the bill were sufficient to make a prima facie showing that the extent of the homestead had not been reduced by virtue of its having been included within the limits of an incorporated city or town in that no statement was made to the effect that the deceased had consented to the property being included within the limits of the city or town. If the Defendant had desired to have the Court determine the question of whether or not the extent of the homestead had been reduced because it had been included within the limits of the incorporated city or town, she could have raised the question by filing an answer showing that the Defendant had consented to having the homestead property included therein. Under the allegations of the bill, the Court had to assume that the owner of the homestead property had not consented to it being included within the limits of the incorporated city or town. No answer had been filed by the Defendant at the time that the case was before the Supreme Court. So the case is not authority for a view contrary to that expressed in this opinion.

The extent of homestead property cannot be reduced without the consent of the owner. Under Sections 1 and 5 of Article X of the State Constitution, the consent of the owner to a reduction in the extent of the homestead is given by his consenting to having his property subsequently included within the limits of an incorporated city or town. The owner of a homestead outside of an incorporated city or town may preserve the extent thereof, even though it is subsequently included within the limits of an incorporated city or town, by withholding his consent to the property being included therein.

January 18, 1935.

FLORIDA INDUSTRIAL SCHOOL FOR GIRLS—DISPOSITION OF
PROCEEDS OF FARM PRODUCE

Dear Sir:

I am in receipt of your letter of the 7th instant, in which you state that the Superintendent of the Florida Industrial School for Girls at

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Ocala advises that she has sold produce from the farm at such school amounting to \$400.00 and that she has deposited the same to the credit of "Petty Cash Fund", and that she makes inquiry if she will be permitted to spend this amount in addition to her regular appropriation of necessary and regular expenses. Your letter contains the inquiry whether this money should be remitted to the State Treasurer and if so, should she be allowed to spend said amount of \$400.00 in addition to the amount provided for said school in the General Appropriation Act for necessary and regular expenses.

In reply your attention is called to Sections 7507, 7508 and 7509, Compiled General Laws of Florida, 1927, reading as follows:

7507. "The superintendents of the State asylums, and the presidents and principals of all State educational institutions are prohibited from selling or otherwise disposing of property belonging to the State, except in cases where they have previously obtained permission from their respective boards of commissioners or trustees."

7508. "Upon the sale of any State property by the superintendents and presidents of State institutions as provided by law, they shall take receipt for the same from the purchaser, which receipt shall be forwarded, together with the proceeds of the sale, to the State Treasurer."

7509. "Any violation of the last two sections shall subject the offender, upon conviction thereof, to a fine of not less than fifty nor more than five hundred dollars, at the discretion of the court."

By reference to the original act it appears that same applied only to insane and deaf mute asylums, the Lake City Agricultural College, Experimental Station and East and West Florida Seminaries. The above quoted statutes, when considered in connection with the institutions to which they originally applied, would appear to have reference to sales of equipment and that it is doubtful that the Legislature intended the same to apply to farm products of State institutions.

In this situation it seems to me advisable and proper for this matter to be brought to the attention of the Board of Commissioners of State Institutions for its consideration and such determination as may seem proper to the Board. In this connection your attention is called to Section 8634, Compiled General Laws of Florida, 1927, relating to the Florida Industrial School for Girls which provides that said Board shall have the charge and management of said school, and when not provided by statute shall make and promulgate its own by-laws and such regulations as will be necessary for the government of said school. This suggested reference of the matter to the Board of Commissioners of

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State Institutions seems proper in view of the further fact that I have not been able to find any statute specifically and definitely covering the question presented.

March 27, 1935.

COOPERATIVE ASSOCIATIONS FORMED UNDER CHAPTER 9300,
ACTS OF 1933, AMENDMENTS

Dear Sir:

Replying to your letter of the 26th instant, it is my opinion that cooperative associations formed and existing under the provisions of Chapter 9300, Laws of Florida, Acts of 1923, are subject to the provisions relating to amendments as provided in Section 9 of Chapter 14657, Laws of Florida, Acts of 1931.

Section 9 of Chapter 14675 provides the only method for amending Articles of Incorporation of cooperative associations formed under Chapter 9300, Acts of 1923, and said Section 9 must be strictly followed, in order to make such amendments effective.

June 24, 1935.

CRIMINAL PROCEDURE—DISPOSITION OF WEAPONS

Dear Sir:

Answering your inquiry with reference to letter of Mrs. _____ of St. Andrews, Florida, relative to return of concealed weapons taken in arrests, I beg to say it appears that Section 7205, Compiled General Laws, of Florida, 1927, governs in such cases. I quote you said Section 7205 as follows:

"The officer making any arrest under the preceding sections shall take possession of any arms or weapons found upon the person arrested, and shall retain the same until after the trial of such person, and if he be convicted, said arms or weapons shall be forfeited, and the sheriff shall sell the same at public sale and account for and pay over the proceeds thereof as in the case of fines collected; but if such person be acquitted, the said arms or weapons shall be returned to him."

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May 25, 1935.

ROADS AND BRIDGES, FEDERAL ACT

Dear Sir:

This acknowledges yours of even date wherein you ask whether or not the Hayden-Cartwright Road Act approved June 18, 1934, or any other Federal legislation affects the allotment of federal funds for road purposes in Florida, in the event any portion or all of the three-cent gasoline tax now being allocated to the counties should be diverted to schools or other purposes.

The said Hayden-Cartwright Road Act now appears as Title 23, Section 55, U. S. C. A. 48 Stat. 995.

This Act, insofar as we are now concerned with it, affects gasoline taxes for the construction, improvement and maintenance of highways and administrative expenses in connection therewith "including the retirement of bonds for the payment of which such revenues have been pledged, * * *."

It is my opinion that the gasoline tax revenues allocated to the counties have not been pledged for the payment of the road and bridge bonds and that to have a diversion thereof to certain other purposes will not affect the allocation of federal funds to Florida under this Act.

I know of no other federal legislation which will affect this situation.

May 13, 1935.

LOTTERIES

Dear Sir:

Replying to your letter of the 11th inst., I beg to advise that to constitute a lottery as defined by the authorities three elements must combine. (1) The disposition of property (2) upon a contingency determined by chance (3) to a person who has paid a valuable consideration for the chance of winning the prize or has hazarded something of value therefor.

In your letter you state that a local merchant wants to try a plan whereby he gives a ticket with each 25c sale and that on each Saturday night duplicate tickets are shaken up in a box and the winning ticket drawn out and that the holder of the winning ticket receives Five Dollars as a prize, which he gets whether present at the drawing or not.

It is my opinion that the three elements which constitute lottery are present in the proposed scheme. In the first place, the merchant disposes of something of value, to-wit, the Five Dollars. In the next

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place this is disposed of by chance, namely, the drawing of a ticket containing the lucky number from among others in a box. Third, the holder has paid something of consideration therefor, namely, he was required to purchase goods to the value of 25c in order to get the ticket. In my opinion this would constitute a violation of our law against conducting a lottery.

May 21, 1935.

FLORIDA STATE HOSPITAL—CLAIMS UNDER AGRICULTURAL
ADJUSTMENT ACT

Dear Sir:

Your letter of the 30th ultimo was on the 7th instant referred to this office from the office of the Governor. You state that you are in receipt of claim under the Agricultural Adjustment Act for refund of taxes paid with respect to articles delivered to the Florida State Hospital. You make inquiry as to the number of such institutions and the statutes relating to same and as to method of purchases for such institutions.

With reference to the Florida State Hospital, located at Chattahoochee, Florida, I refer you to Sections 3641 to 3653, Compiled General Laws of Florida, 1927. With reference to the Florida Farm Colony for the Epileptic and Feeble-minded, located at Gainesville, Florida, I refer you to Sections 3663 to 3677 of the same compilation. The number of inmates at the Florida State Hospital is approximately 4,000 and the number of inmates at the Florida Farm Colony for the Epileptic and Feeble-minded is approximately 500.

These institutions are State institutions and are taken care of by State appropriations. Purchases for these institutions are made by the Board of Commissioners of State Institutions through an employee acting as Agent, but the institutions are allowed to make certain purchases in case of emergencies. There is no central State warehouse but orders are shipped direct from the dealers to the institution. All purchases are approved for payment by the Board of Commissioners of State Institutions and are paid by warrants of the Comptroller on the State Treasurer from State appropriations to such institutions.

I regret that the work of the office has been such as to preclude an earlier reply.

MISCELLANEOUS

June 13, 1935.

LEGISLATURE—JOURNALS

Dear Sir:

I am in receipt of your letter of the 12th instant, in which you state that the daily journals of the House and Senate contain a copy of pardons and reprieves communicated to the Legislature by the Governor, and making inquiry if such copy should appear in the bound journal of the House as well as in the bound journal of the Senate.

Section 11 of Article IV of the State Constitution provides that the Governor shall communicate to the Legislature, at the beginning of every session, every case of fine or forfeiture remitted, or reprieve, pardon or commutation granted, stating the name of the convict, the crime for which he was convicted, the sentence, its date, and the date of its remission, commutation, pardon or reprieve.

Section 12 of Article III of the State Constitution provides that each House shall keep a journal of its own proceedings, which shall be published.

Section 1983, Compiled General Laws of Florida, 1927, provides that the printing contractor shall be furnished by the Attorney General with an index to each of the journals of the two branches of the Legislature which, with the said journals, shall be printed and bound without delay. Section 1986 of the same compilation provides that the contractor shall complete and deliver to the Secretary of State 250 copies each of the journal of the Senate and House and that the Secretary of State shall without delay deliver one copy each to the Governor, the Cabinet Officers, each Justice of the Supreme Court and certain other officers.

In the case of *Amos v. Moseley*, 74 Fla. 555, 77 So. 619, the Supreme Court, on page 621 of the Southern Reporter, used language to the effect that the bound volumes of the legislative journals purport to be a reprint of the original journals of each day.

In the case of *State v. Helseth*, 104 Fla. 208, 140 So. 655, our Supreme Court, on page 659 of the Southern Reporter, used the following language:

"In the absence of any controversy as to what the daily legislative journals (which are printed and distributed each day) disclose, the courts are bound to presume that the printed and bound journals of the Legislature, prepared under sections 1983 and 1986, C.G.L., sections 1307 and 1310, R.G.S., comport with the daily journals, and to consider that such bound journals are secondary evidence of what the daily journals may have contained, at least in the absence of any showing that there is

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a difference between the printed and bound journals and the printed daily journals. No such difference appears in this case."

In view of the above it is my opinion that the bound volumes of the legislative journals of both the Senate and House should comport with the daily corrected journals.

May 16, 1935.

RESIDENCE

Dear Sir:

Replying to your letter of the 15th instant, the matter of what constitutes residence presents a mixed question of fact and intention of the party, and may also depend on the sense in which it is used in a particular statute.

A person may become a resident of the State or any county in the State the instant of his arrival, provided he moves to the State or particular county with the intention of permanently residing there and giving up his residence in the State or county from which he removed. On the other hand a person may be a resident of one place, and spend most of his time away from the county of his residence, or even away from the State of his residence, provided his absence is temporary and necessary in the pursuit of his particular line of work, and provided he does not intend to give up his residence as then established.

It would be hard to lay down any hard and fast rule for the determination of the question of residence in all cases. Some statutes merely use the word "residence", while others use the term "actual residence". In all cases it is necessary to consider the question in the light of the purpose and intention of the legislation involved.

April 30, 1935.

PUBLICATION—NOTICE OF INTRODUCTION OF SPECIAL LAWS

Dear Sir:

I am in receipt of your letter of the 29th instant with reference to publication of notice of introduction of Special or Local Laws.

In reply your attention is called to Article III, Section 21, of the State Constitution, as amended at the General Election of November 6, 1928, and also Sections 94 (78), 95 (79) and 95 (1), Compiled General Laws of Florida, 1934 Supplement, being originally Chapter 13,791, Acts of 1929. You will note that both the Constitution and the statutes with reference to publication of such notices requires publication for 30 days

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and no official would be authorized to limit the requirements of the Constitution and State statutes.

Where time is to be computed from a particular date or where an Act is to be performed within a specified period from and after a day named, the rule as laid down by the Courts is to exclude the first day and include the last. Since the Legislature adjourns on the 31st day of May, 1935, it would, therefore, appear to be necessary for notice of introduction of special laws to be published not later than the first day of May.

With reference to your inquiry as to whether it would be sufficient to make such publication in some tabloid magazine in the County, I beg to say from the information at hand I would not be able to determine whether or not such magazine could qualify as a newspaper for the publication of legal notices. You are, of course, familiar with the statutes relating to the qualifications of newspapers publishing legal notices.

With kindest regards, I am

April 15, 1935.

MORTGAGES—SIGNATURE AND ACKNOWLEDGMENT OF WIFE

Dear Sir:

Answering your letter of the 12th instant I beg to say I do not think it is necessary to the validity of a chattel or crop mortgage executed by a married man for the same to be signed and acknowledged by his wife and recorded. However, I think that the signature and acknowledgment by the wife is desirable in most instances for the reason that a part of the crop might be claimed by the wife as community property. Such mortgages should also be recorded in order to give notice to possible subsequent purchasers.

In this connection I refer you to Sections 5726 and 5727, Compiled General Laws of Florida, 1927, relating to chattel mortgages generally and also to Section 5742 of the same compilation relating to mortgages on crops. I quote you said Sections as follows:

"5726. No chattel mortgage shall be valid or effectual against creditors or subsequent purchasers for a valuable consideration and without notice unless it be recorded, or unless the property included in it be delivered to the mortgagee and continue to remain truly and bona fide in his possession."

"5727. To entitle such mortgage to record, its execution must be acknowledged or proved in the manner provided for mortgages of real property."

"5742. In order to be valid, however, against subsequent encumbrances, or subsequent purchasers in good faith, all such

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mortgages shall be executed, acknowledged and recorded, as is now, or may be hereafter provided by law, upon mortgages upon real estate."

April 20, 1935.

PROCESS—SERVICE BY CONSTABLE

Dear Sir:

I have your letter of the 18th instant, making inquiry if a Constable may serve a writ or warrant of process provided for in Section 5414, Compiled General Laws of Florida, 1927, and other writs issued by the County Court.

In reply I am enclosing herewith copy of a letter from this office to Hon. ———, Attorney at Law, St. Petersburg, Florida, under date of February 13, 1935, with reference to service of process generally by Constables. I call your particular attention to the last paragraph of said letter reading as follows:

"Under Section 4238, above quoted and as last amended, it appears that a Constable may serve process in chancery or civil actions in a Circuit Court in the jurisdiction in which such Constable is authorized to act. The Sheriff or his Deputy, however, would appear to be more properly the executive officers of the Circuit Court for the service of process from said Court."

The above holding was with reference to general service of process by Constables. Section 5414, Compiled General Laws of Florida, 1927, provides for the issuance of warrant for process in proceedings in the County Court between landlords and tenants. This Section reads as follows:

"On the third day after entry of such judgment, unless new trial be granted, the clerk of such court shall issue warrant under seal of the court to the sheriff of the county, describing the premises, and commanding him to put the landlord or lessor in possession thereof."

Under the above Section, as quoted, you will note it is specifically provided that issue of warrant shall be to the Sheriff. It would, therefore, appear that warrants under this statute should be issued to and executed by the Sheriff and not the Constable.

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March 8, 1935.

HOURS OF SERVICE APPLICABLE TO DRIVERS OF MOTOR
VEHICLES—LABOR—TRUCKING INDUSTRY*Dear Sir:*

I am in receipt of your letter of the 5th instant, making inquiry if there are any existing Florida statutes governing the hours of service of employees engaged in driving or operating motor vehicles.

In reply I beg to say the only statute which I find on the subject of your inquiry is Section 1335 (18), Compiled General Laws of Florida, 1934 Supplement, originally Section 19 of Chapter 14,764, Acts of 1931, which I quote you as follows:

"In the interest of safety and for the protection of the public, it shall be unlawful for any auto transportation company subject to the provisions of this Article to require or permit any driver or chauffeur operating a motor vehicle under the provisions of this Article to be or remain continuously on duty for a longer period than twelve consecutive hours, and whenever any such driver or chauffeur of such auto transportation company shall have been continuously on duty for twelve hours he shall be relieved and not required or permitted again to go on duty until he has had at least eight consecutive hours off duty: Provided, that in case of emergency over which such auto transportation company has no control, such driver or chauffeur may be permitted to complete his run or tour of duty; and Provided, that a period of not less than four consecutive hours off duty during any twelve-hour period shall not be counted as a part of any such twelve-hour period."

February 13, 1935.

STATE OF FLORIDA—SEAL

Dear Sir:

I am in receipt of your letter of the 10th instant, making inquiry if you will be authorized to use the Seal of the State of Florida on the outside cover or on the fly leaf of an Elementary Florida History, which you propose to publish.

In reply I beg to say the use of the State Seal in the above manner would not in my opinion violate any State statute. In this connection, however, your attention is called to Section 8118, Compiled General Laws of Florida, 1927, prohibiting the placing of words and other designs on the United States Flag. While the statute mentioned does not apply

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to the matter of your inquiry, it is my opinion that it would be improper to place any additional words or designs on our State Flag or on our State Seal.

February 13, 1935.

HIGHWAYS, SHOOTING ON OR NEAR

Dear Sir:

I am in receipt of your letter of the 9th instant, making inquiry if we have any statutes prohibiting shooting on the State highways.

In reply your attention is called to Chapter 16,111, Acts of 1933, now Section 7748 (1), Compiled General Laws of Florida, 1934 Supplement, making it unlawful to throw any bomb or discharge any machine guns upon, across or along any road, street or highway in the State of Florida.

Your attention is further called to Chapter 16,249, Acts of 1933, now Sections 7748 (2) to 7748 (7), Compiled General Laws of Florida, 1934 Supplement, making it unlawful to hunt any wild animal or bird within one-half mile of either side of State Road No. 27, commonly known as "The Tamiami Trail" from the southern corporate limits of the City of Ft. Myers to the easterly corporate limits of the City of Coral Gables and making it unlawful to discharge or cause to be discharged any firearms on, from, across or within a distance of one-half mile of said road within the above mentioned limits.

The above appear to be all the statutes in this State on the subject of your inquiry.

February 18, 1935.

MARRIAGES, CONSENT OF PARENTS FOR MINORS

Dear Sir:

I am in receipt of your letter of the 15th instant, making inquiry with reference to requirements for the issuance of marriage licenses in this State.

In reply your attention is called to Section 5848, Compiled General Laws of Florida, 1927, which provides for the County Judge to issue marriage licenses. The last sentence in said Section reads as follows:

"If either of the persons to be named in the license be under the age of twenty-one years, the county judge shall require satisfactory evidence of the consent of the parent or guardian of such minor to the marriage; but no minor who has been before

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married shall be required to produce evidence of the consent of parent or guardian as aforesaid."

Your attention is called to Section 5850 of the same compilation, reading as follows:

"No county judge in this State shall issue a license for the marriage of any persons, unless there shall be first presented and filed with him an affidavit in writing, signed by both parties to the marriage, made and subscribed before some person authorized by law to administer an oath, reciting the truth and correct ages of such parties, and unless both such parties shall be over the age of twenty-one years: Provided, that if either of such parties shall be under the age of twenty-one years, such county judge shall not issue a license for the marriage of such party unless there shall be first presented and filed with him the written consent of the parents of such minor to make such marriage, acknowledged before some officer authorized by law to take acknowledgments and administer oaths: Provided, this section shall not apply in any case where both parents of such minor shall be deceased at the time of making application for such marriage license."

February 2, 1935.

CRIMINAL PROCEDURE—BAIL BONDS

Dear Sir:

I am in receipt of your letter of the 31st ultimo, requesting citations of statutes relating to bail bonds in this State.

In reply I refer you to Sections 8 and 9, Declaration of Rights of the State Constitution, reading as follows:

"Sec. 8. Excessive bail shall not be required, nor excessive fines be imposed, nor cruel or unusual punishment or indefinite imprisonment be allowed, nor shall witnesses be unreasonably detained."

"Sec. 9. All persons shall be bailable by sufficient sureties, except for capital offences where the proof is evident or the presumption great."

I also refer you to the following Sections of the Compiled General Laws of Florida, 1927: 2157 to 2162, 2827, 4735, 5147 to 5155, 5441, 7545, 7546, 8225, 8235, 8263, 8264, 8318, 8320, 8328, 8330, 8333 to 8339, 8346, 8347, 8351 to 8361, 8408, 8426, 8435, 8476 and 8496.

I regret that we do not have copies of these statutes to forward you and you will note the list is rather long to undertake to make

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copies of same. You will doubtless be able to find this compilation in some of the libraries of your City.

January 22, 1935.

SOLDIERS AND SAILORS—VETERANS OF FOREIGN WARS

Dear Sir:

I am in receipt of your letter of the 2nd inst., requesting copies of statutes relating to Veterans of Foreign Wars.

In reply I regret to say we do not have such statutes in pamphlet form for distribution, but I am citing you certain statutes which you will be able to find in some library in Washington or in the office of our Senators and Representatives in Congress from this State. I refer you to the following:

Section 9 of Article IX of the State Constitution— Providing tax exemption in the sum of \$500.00 to every person who is a bona fide resident of the State and has lost a limb or been disabled in War or by misfortune;

Section 1269, Compiled General Laws of Florida, 1934 Supplement— Providing certain license tax exemptions to permanent resident electors in the State producing an honorable discharge from the service of the United States during the World War or Spanish American War;

Section 1279, Compiled General Laws of Florida, 1934 Supplement— Providing for free peddling license to Confederate Veterans of the Civil War, Veterans of the World War or Spanish American War falling within any exemption otherwise provided by law;

Section 4151, (58) Compiled General Laws of Florida, 1934 Supplement— Providing exemption from the payment of licenses of persons connected with race tracks to disabled Ex-Service men of any war in which the United States was a participant;

Section 1424, Compiled General Laws of Florida, 1927, authorizing the Trustees of the Internal Improvement Fund of Florida to enter into contracts or agreements with the Federal agencies or departments for the purpose of locating returned soldiers, sailors and marines and others who have served with the armed forces of the United States, in the European War or other wars of the United States, including former American citizens who served in the Allied Armies against the Central Powers and who have been repatriated and honorably discharged, and utilize and convey in such manner as they deem advisable

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therefor such State lands as in their judgment may be necessary to carry out the purposes of this Section;

Sections 3935 (26) and 3935 (27), Compiled General Laws of Florida, 1934 Supplement, providing for issue of certificates to practice accountancy to War Veterans under certain circumstances;

Section 2131, Compiled General Laws of Florida, 1934 Supplement, creating the office of State Service Officer and Assistant State Service Officer to be appointed by the Governor to investigate and press for final action by the Veteran's Bureau or other Federal Bureau all claims for compensation, pension, training, hospitalization and rehabilitation of disabled Ex-Service men of the Spanish American War and the late World War and the dependents of such veterans;

Section 2146 (16), Compiled General Laws of Florida, 1934 Supplement—Providing for certain assistance to War Veterans in securing Federal hospitalization.

Trusting that the above may be of some service to you, I am

January 8, 1935.

MARKS AND BRANDS—USE OF RUBBER STAMPS INSTEAD OF STEEL STAMPS

Dear Sir:

I am in receipt of your letter making inquiry if under the law it is permissible to use rubber stamps instead of steel stamps for stamping the carcasses of animals slaughtered for the market.

In reply your attention is called to Section 6962 (2), Compiled General Laws of Florida, 1934 Supplement, the first part of which reads as follows:

"It shall be the duty of the county commissioners of each county, when divided into cattle districts and inspectors or recorders appointed for said district, to provide each inspector or recorder with a steel stamp of the following description, to-wit: Said stamp shall be of steel, and be one and three fourths inches in diameter, and it shall contain around the border thereof the name of the county and number of the district, and in the center shall be the word 'recorded', and the number of the inspector or recorder."

You will observe that the above statute specifically requires a steel stamp. The Legislature may have had in mind that a steel stamp is

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more sanitary than a rubber stamp or it may have had in mind the expense of the steel stamp which you mention as a means of preventing easy and inexpensive counterfeiting of stamps. At any rate, the law seems to be mandatory in its requirement of a steel stamp and in my opinion a rubber stamp would not comply with the provisions of said statute.

January 23, 1935.

BANK NIGHT, LOTTERIES

Dear Sir:

This refers to your letter of January fourth, requesting my opinion as to whether or not certain facts set forth in the first paragraph of your letter constitute a violation of either Section 7657 or Section 7667 of the Compiled General Laws of Florida.

The facts which you set out in your letter cover, in the main, what is commonly known as "bank night" at the different motion picture houses in Florida.

Several State Attorneys have made inquiry with reference to the same matter, and a number of private individuals have also written my office, and it apparently has become a question of considerable interest throughout the State, both to the citizenship and to the law enforcement officers. This same question has been before the Attorney General of a number of other States, and likewise before the different prosecuting attorneys of other States.

The advertising system, known as "bank night", is a copyrighted system and belongs to what is known as the Affiliated Enterprises, Inc. The Affiliated Enterprises, Inc., owns all of the rights of this advertising system, and it is used in the various States by the different motion picture operators under contract with the Affiliated Enterprises, Inc.

The copyrighted plan, in brief, provides that the operator of a motion picture house shall decide upon the amount of money that is to be awarded, and arrange with a bank to guarantee the payment of the award to those to whom the award is made. It provides that a registry book shall be kept and maintained at a place in the open lobby, where the people or anyone can register without trouble or annoyance, and in no case permit or require the purchase of a ticket in order to register. The plan provides that placards or banners both inside and outside the theater shall inform the public that registration for "bank night" is absolutely free. It provides that the party registering must register his own name and only once, and that one registration will be good for all "bank nights", and that the signature must indicate whether it is Mr., Mrs. or Miss, and that it must be a signature

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and not printed, and that theater employees or relatives are not allowed to participate. It provides that the money to be given away or awarded shall be deposited each week, in advance of the "bank night", in the bank account in the bank in which proper arrangement has been made. The numbers appearing on the register where the party signs serves only as an identification number. These numbers are to be placed in an open container, and one number is drawn out on "bank night", and this one is given to a committee of three men who take the number and refer to the register book and then announce the name of the winner by announcing the name either Mr., Mrs. or Miss, and also the address. If the party is properly identified, then the money will be paid to him or her at a certain designated hour next morning. If the party whose name is called on "bank night" is not present (only one name is drawn on each "bank night"), then the amount of the account is carried over to the next week, and this is added to the current week's account, etc. The drawing is made by a child, blindfolded, who takes from the container one number and this number is handed to the judges. At the same time, the party's name is called in the lobby of the theater and also in front of the theater. A reasonable time is given, and if the party whose name is called does not appear from the inside of the theater or from the crowd outside, then announcement is made that the bank account which has not been claimed will be added to the following week's account. The number called is returned to the container, whether it wins or not.

The copyrighted "bank night" arrangement specifically provides that it is not necessary for anyone who registers to have attended the theater, and that he does not have to pay an admission fee to the theater or for registration or for any purpose, in order to claim the award, if such person is present and lays claim to the award within the time allowed, and is the proper person who is duly and properly registered.

The above, in the main, are the instructions for the carrying on of the advertising scheme known as "bank night". The question then arises, assuming these instructions are properly carried out, if this is purely an advertising scheme, or whether it might be in its nature a lottery and in violation of the criminal laws of the State of Florida.

It is my opinion that if it is a violation of any section of our State law, it is in violation of Section 7667, Compiled General Laws of Florida.

Referring to Section 7667, Compiled General Laws, it will be seen that this section has for its purpose the prohibiting of a lottery. The authorities seem to be clear and uniform in holding that there are three essential requisites to constitute a lottery. These requisites or elements seem to be as follows:

1. The disposition or awarding of property or something of value.

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2. The awarding or disposition of this property must be made upon a contingency which is determined by lot or by chance.

3. That the award or disposition of property must be made to a person who has paid a valuable consideration for the chance of winning the award or property.

This latter element involves the hazarding of something of value upon the chance of winning.

"Bank night", as above outlined, clearly contains the first two elements. Then the question arises as to whether or not the third element exists, if "bank night" is run and operated in accordance with the scheme or system, as above set out.

It appears clearly that if the "bank night" is properly carried out as indicated by the owners of the copyrighted scheme, any person who will register his name may have the chance of winning the award, without hazarding anything of value or anything whatsoever. In other words, any person may register without cost or charge of any kind or character, and if his number is drawn and he is present in the front of the theater or in the theater at the time of the drawing, he may obtain the award, and thus he may obtain the award without buying any ticket or token or without even being in the theater.

Thus it is that if these instructions are carried out and the operation is strictly in accordance with the copyrighted "bank night", as above set forth, it is my opinion that the third element of a lottery is lacking, and that such operation of "bank night" is not a violation of Section 7667, Compiled General Laws of Florida, or any other statute. In other words, if the registering of the name and the drawing of the award may all be done without any requirement of compensation or charge of any kind or character of and from the person registering, in order to entitle such person to the award, then it appears clearly to be an advertising scheme separate and apart from the operation of the moving picture theater, and is not a violation of law.

The administration of the code authority of the motion picture industry, the National Recovery Administration, on March 29, 1934, approved the following resolution:

"RESOLVED: That the provisions of Section 1, part 3, Article V-E, are deemed to include, among the other methods or devices therein specified, which directly or indirectly, lower or tend to lower announced admission prices, and which are unfair to competing exhibitors, or which deceive the public, so-called 'race nights' and so-called 'bank nights' or similar or like schemes or plans otherwise designated, if any participant therein is directly or indirectly required to purchase or otherwise acquire for value a ticket or other token of admission to the theater when any such scheme or plan is being offered or presented."

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It, therefore, appears that the United States Code Authority places stress upon the fact as to whether or not the person to whom the award is made is either directly or indirectly required to purchase or acquire for value, either a ticket or other token of admission to the theater. If, in order for a person to receive the award, it is necessary for him to purchase a ticket to the theater or to pay anything of value for any token of any kind to permit him to obtain a chance on the award, or if he is required to pay anything of value in connection with the scheme in anywise to the motion picture operator, in order to obtain a chance at the award, then the third element necessary to complete what constitutes a lottery would exist, and, of course, anyone violating the lottery statute would be in due course properly prosecuted.

The picture enterprises have evinced an interest in this question, and state frankly that they do not wish to violate the law in any sense, and have issued instructions to all operators to most carefully follow the instructions of "bank night," as it is copyrighted, and, hence, I doubt if there will be any further infractions of the copyrighted requirements, even though there may have been some in the past.

If, however, you should upon proper investigation find any infractions, then it is my judgment that you should do your duty as a law enforcement officer, and should promptly prosecute anyone who violates the lottery laws of this State.

July 11, 1935.

COUNTY BONDS, INTEREST AFTER MATURITY

Dear Sir:

I acknowledge receipt of your favor of the 8th inst., requesting an opinion as to whether Hendry County is liable for the payment of interest on Court House Bonds maturing January 1, 1934, after maturity of said bonds. I note that you state that there is no provision made in the bonds that interest will be paid after they fall due or after maturity.

If the bonds in question do not carry the provision for the payment of the principal with interest thereon until paid, the holder of the bonds is not entitled to interest after maturity of the bonds until the claim has been reduced to judgment. It has been held by the Supreme Court of this State that

"In the absence of statute or valid agreement for interest, county warrants do not bear interest even after demand and refusal to pay them for want of funds."

See NATIONAL BANK OF JACKSONVILLE vs. DUVAL COUNTY, 45 FLA 496, 34 SO 894.

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Also see DUVAL COUNTY vs CHARLESTON ENG. & CONT.
CO., 101 FLA 341, 134 SO 509,

where the Court held

"Counties in the State of Florida are not liable for interest on debts due by them unless expressly authorized by statute or unless interest is expressly provided for in an authorized contract containing a provision for the payment of interest."

In a more recent case, that of

BOARD OF PUBLIC INSTRUCTION vs KENNEDY, 109 FLA.
153, 147 SO 250,

the Court said in effect that the allowance of interest prior to judgment was justified only when specifically provided for by statute or when the contract at its inception had included in it an authorized stipulation agreeing to pay interest on deferred payments required to be made under the contract.

If the bonds contain a provision that interest shall be paid from the date thereof until the principal is paid, the county is liable for the payment of interest after maturity of the bonds.

June 28, 1935.

CRIMINAL PROCEDURE, COUNTY PAYMENT FOR TRANSCRIPT
FOR INSOLVENT

Dear Sir:

Replying to your favor of June 25th., permit me to say the County Commissioners should not be required to pay for more than one transcript of the record in a criminal case where the Plaintiff in Error is insolvent under Section 8489 of the Compiled General Laws.

May 29, 1935.

PAYMENT OF BOND BY SURETY AFTER DEATH OF PRINCIPAL

Dear Sir:

Replying to your favor of the 28th. instant, I beg to advise that the death of the principal on a ninety day cash bond for the payment of fine and costs does not relieve the sureties from the payment of the bond. The bond was given in lieu of cash in order to give the principal ninety days in which to pay the fines and costs, and the sureties are liable on the bond notwithstanding the death of the principal.

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May 23, 1935.

TRAFFIC OFFICERS, JURISDICTION

Dear Sir:

Replying to your letter of the 20th instant, I beg to advise that county traffic officers under the statute have the same powers of arrest and service of criminal process as the sheriffs and constables. This of course applies only in the enforcement of the traffic laws.

As to the power of the Railroad Commission to enforce the law in relation to auto-transportation companies, I will call your attention to Section 21 of Chapter 14764, Laws of Florida, Acts of 1931, which authorizes the Railroad Commission to employ inspectors, and that such inspectors are vested with the powers of deputy sheriffs in all counties of the State, and authorized to stop and check any motor vehicles on the highways for violation of the provisions of said Act or the laws touching such motor vehicle operation, and to make arrest for any such violation in the same manner as such arrest could be made by the deputy sheriffs of the several counties.

May 23, 1935.

TRAFFIC OFFICERS—COUNTY FINANCES—BUDGETS

Dear Sir:

I have your letter of the 15th instant with reference to payment of fees to the Sheriff for services rendered by Traffic Officers.

Your attention is called to Section 2878 which provides that Traffic Officers on the public highways of the State outside the limits of incorporated cities and towns shall be duly appointed and qualified deputies acting under the respective Sheriffs. Your attention is further called to Section 2879 fixing the compensation of such officers at not less than 1200.00 per annum, payable monthly, but providing that it shall be unlawful for such officer to charge, collect or receive any compensation other than his monthly salary. Your attention is further called to Section 2882, which provides that Traffic Officers shall be allowed for making arrests the same fees as Sheriffs and the same mileage for conveying prisoners, the same to be taxed as costs in case of conviction and that all such fees and fines imposed upon conviction shall be paid into the Fine and Forfeiture Fund of the County.

In my opinion it is unlawful for the Sheriff or any of his deputies to draw fees for enforcing the Traffic Law, but I think the Sheriff would be entitled to fees for services rendered by such officers when acting solely in their capacity as Deputy Sheriffs and with reference to matters outside of their duties as Traffic Officers.

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You make further inquiry if your Board would be authorized to contract for expenditures for certain purposes not provided for in the County budget and pay for such work under the next budget.

In reply your attention is called to Sections 2302 and 2303, Compiled General Laws of Florida, 1927, and also to Section 2306, as amended by Chapter 16,286, Acts of 1933. You will note that Section 2302 provides for the Clerk of the Circuit Court to make an estimate of receipts for the following year and Section 2303 makes it unlawful for the County Commissioners to expend or contract for the expenditure in any one year more than 95% of the estimated revenue of such year. You will also note that Section 2306, as amended, requires the County Commissioners to make an estimate of expenditures and specifically provides that the adoption of such estimates by the Board shall give the same the force and effect of fixed appropriations and the same shall not be altered or amended or exceeded. You will note a provision in this Section, however, that nothing contained therein shall be construed as prohibiting the reserving in the estimates a reasonable sum for contingencies and emergencies, and the appropriation of any part of said sum so reserved for any expense of the County authorized by law.

May 6, 1935.

CRIMINAL PROCEDURE, ISSUE OF CAPIAS WHEN PARTY ALREADY
IN CUSTODY

Dear Sir:

Replying to yours of May 3, in which you ask to be advised whether or not a capias must be issued, where a man is arrested on a warrant from the Justice of the Peace, is bound over to the Criminal Court and the County Solicitor files an information with instructions to the Clerk of the Criminal Court not to issue a capias on the ground that the accused is in custody, permit me to say Section 8375 of the Compiled General Laws reads as follows:

"After any person shall be indicted for felony or for misdemeanor, or after an information shall be filed against him, *if he be not already in custody*, a capias shall issue for his arrest and shall be directed to all and singular the sheriffs of the State of Florida, and when the Grand Jury shall have presented to the Circuit Court a bill of indictment for felony, and the accused be in custody, the Court shall cause him to be arrested and tried at the same term. * * * *"

You will observe that the statute provides for the issuance of a capias after an information is filed against the accused if he be not

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already in custody. In view of the provisions of this statute it is my opinion that where the accused is already in custody the issuance of a *capias* is not required by law.

JUDICIAL SALES, HOURS, CONTINUATION

Dear Sir:

Replying to your letter of the 16th instant, in which you ask whether it is permissible to continue an execution sale after the hour of 2:00 P. M. on the day advertised for the sale to take place, I respectfully refer you to Section 4523 of the Compiled General Laws of Florida 1927, which provides that the sale shall continue from day to day until the property is disposed of.

I respectfully suggest, however, that you confer with the Attorney for the judgment creditor, and take his advice in the matter.

March 6, 1935.

CRIMINAL PROCEDURE, COSTS

Dear Sir:

Replying to your favor of March 4th., I beg to advise that the law provides for certain definite items of cost to be charged against the defendant in a criminal case, and Section 8475 requires that in all cases of conviction for crime the costs of prosecution shall be included and entered up in the judgment rendered against the convicted person. In view of the law I do not know of any authority for an officer to omit an item of cost.

January 25, 1935.

CRIMINAL PROCEDURE—INCLUDING COST OF JURY IN
ASSESSMENT OF COSTS AGAINST DEFENDANT

Dear Sir:

I am in receipt of your letter of the 21st inst., making inquiry whether the cost of a jury should be assessed against a defendant in criminal proceedings in the County Judge's Court.

In reply your attention is called to Section 3, Chapter 10,167, Laws of Florida, Acts of 1925, now Section 4467, Compiled General Laws of Florida, 1927, requiring the County Judge to draw from the jury box the names of twelve persons to serve as jurors for the term. The jurors

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in such cases are paid by the County for the term of Court served by them, and in my opinion the cost of the jury is not chargeable against parties defendant under this procedure.

When a defendant is convicted the jury may take into consideration in fixing the amount of fine the necessity for paying the jury which tried the case, but the jury fees should not, in my opinion, be taxed as Court costs.

October 19, 1936.

LOTTERIES—SUIT CLUBS

Dear Sir:

I am in receipt of your letter of the 15th instant referring to my letter of April 24, 1934, to Hon. A. P. Buie, State Attorney, with reference to suit clubs from which I assume you have before you a copy of said letter. You state you have a set up that is a little different from the case mentioned in the above letter. You also outline the suit club method employed in your jurisdiction and make inquiry as to the legality of the same.

In studying the outline given by you it appears that the same is not entirely complete. You state that the club may consist of any number of members, each of whom pays to the operators \$1.00 down and \$1.00 a week for twenty-four consecutive weeks, making a total of \$25.00 paid by each member for which he may buy a suit of clothes or any other merchandise of like value, and there seems to be no question of the quality of the merchandise or its value; that the operator gives each member a card bearing a number from 1 to 100; that a drawing is held during each week for the 24-week period and the member or members whose number is drawn receives a suit or other merchandise of the value of \$25.00; that if any member desires to stop payment before the total of \$25.00 is paid in, he will receive a credit of the amount paid in or may choose such merchandise as he desires of the value of the money paid. Your statement is not clear as to whether the members failing to receive a suit of clothes during the 24 weekly drawings receive the value of their payments during those weeks. Neither is it clear as to whether the ones who are successful in the drawings are required to continue payments after drawing a suit. This demonstrates the difficulty of giving a complete picture of any particular set up. Furthermore, there may be various methods pursued with reference to suit clubs throughout the State and possibly within the same cities where such cities are as large as that in which you reside. In this situation I feel a hesitancy in undertaking to give an opinion with reference to various methods that may be adopted by the operators of suit clubs other than the expressions given by this office in the above mentioned letter to Hon. A. P. Buie. I will,

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therefore, suggest after studying the particular set-up or set-ups within your jurisdiction if in your judgment you find the law is being violated, or is probably being violated with reference to lotteries or with reference to fraud, it would be well to test the matter out in Court and secure a judicial determination of the same.

For your assistance in such matter your attention is called to the requisites or elements of lotteries which seem to be as follows:

1. The disposition or awarding of property or something of value.
2. The awarding or disposition of this property must be made upon a contingency which is determined by lot or by chance.
3. That the award or disposition of property must be made to a person who has paid a valuable consideration for the chance of winning the award or property.

This latter element involves the hazarding of something of value upon the chance of winning.

October 27, 1936.

AID TO WORLD WAR VETERANS AND CHILDREN—CHAPTER 17474
OF 1935

Dear Sir:

Replying to your favor of October 24th., in which you ask to be advised whether or not under stated circumstances the daughter of a deceased War Veteran is entitled to and may receive aid under the provisions of Chapter 17474, Acts of 1935, Laws of Florida, permit me to say, by reference to Section 2 of said Act we find the following provision:

"SECTION 2. All sums appropriated and expended under this Act shall be used to pay matriculation fees, board and room rent, and buy books for the children of deceased Veterans, as above defined and limited, (that is to say in Section 1), who are between the ages of 16 and 22 years and who are in attendance at a *State* educational or training institution of a secondary or college grade, provided, that no tuition shall be charged to, or paid by the children benefited hereby. *Sums provided hereby shall be paid out on vouchers signed by the governing authorities of the institution in which such child is in attendance, and such Board shall determine the eligibility for the benefits thereof.*"

You will observe from the provisions of Section 2 that the governing authority of the college or training institution is vested with the power of determining the eligibility of a particular student to the benefits provided for by the Act.

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Section 1 of the Act in part reads as follows, to-wit:

"It is hereby declared to be the policy of the State of Florida to provide educational opportunities at State expense for children, either of whose parents *entered* the military, navy, marines or nurses corps service of the United State *from the State of Florida and died*, (in that service or from injuries sustained or disease contracted therein) between the sixth day of April 1917 and the second day of July 1921, both inclusive, and for such children of such parents as have been bona fide residents of Florida for five years next preceding their applying for the benefits hereof, subject to the rules, restrictions and limitations hereof".

It appears from the provisions of the statute quoted above that the benefits under the statute were intended to accrue only to the children of parents who entered the military service from the State of Florida and who died in that service, or from injuries sustained or disease contracted therein between the sixth day of April 1917 to the second day of July 1921; and also to the children of such parents as have been bona fide residents of Florida for five years next preceding their applying for the benefits provided by the statute.

If the deceased Veteran of the World War to whom you refer in your letter became a bona fide resident of the State of Florida on or before April 23rd. 1931, and died as a result of injuries sustained or disease contracted between the sixth day of April 1917 and the second day of July 1921, both inclusive, and died in this State on April 23rd. 1936, it is my opinion that under the provisions of the statute his daughter would be eligible to receive the benefits thereof, provided, the governing authorities of the college determine such child to be eligible to such benefits, and further providing that in the appropriation of \$4,000.00, which is provided for by Section 4 of the Act there should be sufficient funds to pay the benefits provided for by the Act.

August 3, 1935.

REGULATION OF SALE OF USED CARS—CHAPTER 17113 OF 1935

Dear Sir:

I acknowledge receipt of your letter of the 2nd inst., inclosing telegram and requesting an opinion as to the validity of House Bill Number 634, Chapter 17113 of 1935, regulating the business of selling used motor vehicles in the State of Florida.

In reply I beg to state that in my opinion the Act is valid and authorizes the State Motor Vehicle Commissioner to perform the duties therein prescribed.

"Every law found on the statute books is presumptively constitutional, until declared otherwise by the court, and an

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officer of the executive department of the government has no right or power to declare an act of the Legislature to be unconstitutional, or to raise the question of its constitutionality without showing that he will be injured in person, property, or rights by its enforcement." (State vs. State Board of Equalizers, 84 Fla. 592, 94 So. 681.)

October 30, 1936.

APPOINTMENT OF GUARDIAN FOR WARD OF THE FLORIDA
HOSPITAL FOR THE INSANE

Dear Sir:

Section 5913 of the Compiled General Laws of Florida 1927, empowers the County Judges of this State to appoint guardians of persons adjudged insane or lunatic domiciled in this State, whenever it appears necessary and proper, and such guardian shall have and exercise the same powers and duties over and concerning the persons and property of such insane persons and lunatics as may be by law had and exercised by guardians of infants, and the County Judges shall have and exercise the same powers touching such guardians and the property of such insane persons and lunatics as may be by law had and exercised touching the guardians and the property of infants.

It is to be observed that the necessity for such appointment must exist as a prerequisite to the exercise of such power. It is my opinion that such necessity may exist with relation to the powers and duties to be exercised over and concerning the persons adjudged insane or lunatic, without the necessity for the exertion of such powers and duties over the property of such insane persons and lunatics, and that the necessity for the exercise of powers and duties by guardian over the property of such insane persons and lunatics may exist without the necessity for the exercise of powers and duties over the persons of such insane persons and lunatics.

If an indigent person is adjudged insane and committed to the Florida Hospital for the Insane, there can hardly be any necessity for the appointment of a guardian to exercise powers and duties over such insane person, so long as he or she is a ward of the State in the Florida Hospital for the Insane, but on the other hand, the necessity may exist for the appointment of a guardian for such ward to have and exercise powers and duties over and concerning the property of such ward.

In your letter of the 28th instant, you state that some two years ago Mrs. _____, resident of Washington County, was committed to the Florida State Hospital for the Insane; that she was not living with her husband at the time of her commitment to the hospital, but that they were not divorced; that since her commitment to the hospital

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her husband was killed in Jackson County by a truck owned by the Kenney Lumber Company of Blountstown; that insurance was carried on the truck, and that the insurance company and Kenney Lumber Company desire to pay any moneys which may be recovered over to some guardian for Mrs. _____ and her child.

The point on which you wish to be advised is the proper venue for the appointment of such guardian.

Under the circumstances and assuming that the domicile of Mrs. _____ at the time she was committed to the Florida Hospital for the Insane was in Washington County, it is my opinion that you as County Judge of Washington County under the authority of Section 5913 of the Compiled General Laws of Florida, have the power and authority to appoint a guardian to have and exercise powers and duties over and concerning the property of Mrs. _____.

November 6, 1936.

CHIROPODY—COMMERCIAL SALE OF CUSTOMARY FOOT
APPLIANCES

Dear Sir:

This is in reply to your letter of November 3. You request my opinion as to whether or not a clerk or proprietor in a store which sells foot appliances, who tells his customers what is wrong with their feet and prescribes the appliances to correct the condition, violates the provisions of Chapter 15911, Laws of Florida, Acts of 1933. In other words, does the clerk or proprietor in such a store practice chiropody as defined in said statute without a license? The further question arises as to whether or not, even though such action on the part of the clerk or proprietor may come within the definition of chiropody, such acts are exempt under the provisions of Section 5 of the Act.

Section 1 of Chapter 15911 reads as follows:

"Section 1. DEFINITION.—Chiropody shall mean the diagnosis, medical, surgical, palliative, and mechanical treatment of ailments of the human foot or leg, except the amputation thereof; and shall include the use and prescription of local anesthetics."

Section 5 of Chapter 15911 reads as follows:

"Section 5. This Act shall not apply to licensed physicians or surgeons in this State nor to surgeons of the Army, Navy, and Public Health Service, when in actual performance of official duties, *nor to the commercial sale of the customary foot appliances in retail stores.*" (Italics ours.)

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Under date of November 5, 1934, I rendered an opinion dealing with the right of a person selling orthopedical foot appliances to massage the feet of his customers and protect same by bandages and adhesive felt while awaiting the delivery of appliances from the manufacturer. I stated in that opinion the following:

"In my opinion massaging the feet and protecting them with bandages and adhesive felt, even though for temporary relief while waiting for the manufacture of the appliances being sold, constitute the practice of chiropody under the above quoted statute, and do not come within the exemptions of Sections 5 of said Act."

It is readily apparent that there are many border-line cases which arise from time to time. The Legislature has seen fit in Section 5 of Chapter 15911 to specifically provide that the Act shall not apply to the commercial sale of customary foot appliances in retail stores. I do not believe that it was the intent of the Legislature to completely exempt all persons engaged in the commercial sale of foot appliances from the provisions of the Act so as to make it lawful for them to engage generally in the practice of chiropody. I believe that the Legislature intended that the activities of such persons should be confined within the particular field of selling appliances. It would therefore be my opinion that such persons are exempt from the provisions of the Act only insofar as it is necessary to enable them to engage in the commercial sale of customary foot appliances. It is my opinion, however, that when persons so engaged confine their activities to selling such appliances they must necessarily have the right to recommend to the customers particular types of appliances for various conditions. If this were not the case the legislative exemption would have been a nullity and it would be unlawful for the store selling such appliances to do any more than display them on the counter.

From what I have said it is apparent that each case must be judged on its own merits. The line separating sales talk from a diagnosis is not clear cut and it is impossible to state any general rule for the determination of all cases.

October 31, 1936.

OFFICERS—COMMISSION EVERGLADES NATIONAL PARK
COMMISSIONERS

Dear Sir:

I am in receipt of your letter of the 28th instant making inquiry if members of the Everglades National Park Commission should be commissioned or if a formal letter notifying them of their appointment will suffice.

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In reply your attention is called to the decision of our Supreme Court in the case of *State v. Sheats*, 78 Fla. 583, 83 So. 508, in which the Court held "the term 'office' embraces the idea of tenure, duration, and duties in exercising some portion of the sovereign power, conferred or defined by law and not by contract". The Court in said decision distinguishes between an office and employment and stated that an employment does not authorize the exercise of any sovereign power or any prescribed independent authority of a governmental nature; and this constitutes perhaps the most decisive difference between an employment and an office and between an employee and an officer.

Sections 1756 (1) to 1756 (20), Compiled General Laws of Florida, 1936 Supplement, relate to the Everglades National Park Commission providing for its creation and specifying its powers and duties. You will note also that the Commission is authorized to acquire title to lands in the name of the State and convey same and is given the power of eminent domain and authority to employ an attorney to prosecute and defend any action in which the State or said Commission may be a party.

In my view the members of the Everglades National Park Commission are officers under the law and not employees. It is my opinion, therefore, as officers the said members of the Commission should be commissioned as other officers.

November 9, 1936.

SURETY BOND—RELEASE OF LIABILITY UNDER

Dear Sir:

This is in reply to your letter of October 30, with enclosed copy of minutes of special meeting of the Commissioners of Suburbs Beautiful Special Sanitary District. You request my opinion as to whether or not the Commissioners of Suburbs Beautiful Special Sanitary District have authority to release ———, former Commissioner of the District, from any and all liability for further accounting for funds in the manner set forth in the resolution described in the copy of the minutes of said special meeting.

The right to execute such a release is limited by the following provision contained in Section 6300, Compiled General Laws of Florida, 1927:

"Provided, no company shall be released of its liability upon any such bond by reason of the fact that the books and accounts of the principal have been examined and approved as correct by the proper authorities, when in "fact there has been a breach of said bond and a loss accruing from said breach."

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It is therefore my opinion that no release which might be granted could affect the liability of the surety company if in fact there had been a breach of the condition of the bond and a loss accruing from said breach.

November 25, 1936.

RAILROADS—GRANTS

Dear Sir:

Upon receiving your letter of November 24th, I made further inquiry concerning the acreage per mile granted to the South Florida Railroad, and also to the Jacksonville, Tampa, and Key West Railroad.

I find that the grants were not contained in the charters themselves, but were otherwise provided for. In regard to the South Florida Railroad the Legislature of Florida in 1883 enacted Chapter 3491, which referred to a previous contract entered into by the South Florida Railroad with the Trustees of the Internal Improvement Fund, and which also referred to a previous grant of land, and confirmed said grant. The question of acreage per mile was specifically provided for in that Act in the following words:

"Sec. 17. That if there should be any deficiency in the grant of land made to said company under and by virtue of the laws of this State and by the contract of the present corporation with the Trustees of the Internal Improvement Fund, then it shall be the duty of the Trustees of the Internal Improvement Fund to make up said deficiency until a total of three thousand eight hundred and forty acres is conveyed to said company for each and every mile of road graded, cross-tied, ironed, equipped and operated; * * *"

In regard to the Jacksonville, Tampa, and Key West Railroad, the grants were made pursuant to an Act of the Congress of the United States of May 17, 1856, which Act granted "every alternate section of land designated by odd numbers, for six sections in width on each side of each of said roads and branch."

The deeds which I referred to in my letter of November 20th were made pursuant to this Act of Congress.

For your information I am enclosing under separate cover the Twenty-Third Biennial Report of the Land and Field Note Divisions of the Department of Agriculture. This Act of Congress is set forth at page 15 of the Report.

The early history of the development of railroads in this State is an interesting subject. I believe that your statement as to the reason the

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Plant System dropped the South Florida Railroad Company Charter in favor of the Jacksonville, Tampa, and Key West Charter, is borne out by the information above stated. The South Florida Railroad under the statute of 1883 obtained 3,840 acres per mile, while under the Act of Congress I believe the acreage would total about 6,000 acres per mile

I hope this is the information you are seeking.

November 28, 1936.

OFFICERS—MUNICIPAL—COUNCILMEN—HOLDING MORE THAN
ONE OFFICE

Dear Sir:

I am in receipt of your letter of the 27th instant enclosing communication from Mr. _____ of Pensacola, Florida, under date of the 26th instant, together with opinion of the City Attorney under date of the 16th inst., addressed to Mr. _____. The opinion of the City Attorney is to the effect that Mr. _____ could not accept appointment to the Everglades National Park Commission without forfeiting his position on the City Council of Pensacola, basing his opinion on his conclusion that the members of the Everglades National Park Commission are under the law officers and on Section 4 of Chapter 15,425, Laws of Florida, Acts of 1931, reading in part as follows:

"Members of the Council shall be qualified electors of the City, and shall not hold any other office, except that of notary public or member of the State militia. A member of the Council ceasing to possess any of the qualifications specified in this Section, or convicted of any crime, while in office, shall immediately forfeit his office."

Answering your request for my advice in the premises, I beg to say in my opinion the opinion expressed by the City Attorney is correct and that a member of the City Council of Pensacola would forfeit such position upon becoming a member of the Everglades National Park Commission.

I return herewith the above mentioned letter and opinion attached.

December 23, 1936.

DISTRIBUTION OF RECOVERED BOND FUNDS—CHAPTER 16860
ACTS OF 1933—CITRUS FRUIT DEALERS

Dear Sir:

This is in reply to your inquiry of December 1 concerning the distribution of the proceeds of a check in the amount of \$1000.00, executed

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by the United States Fidelity and Guaranty Company, in settlement of all claims arising under the Citrus Dealers' Bond.

The statute makes no specific provision in regard to the distribution of such funds even though it is conceivable that the amount of claims which might arise might in some instances exceed the amount of the bond. Inasmuch as the bond is payable to you as governor, you would be the only proper person to make distribution.

December 23, 1936.

USE OF GOVERNOR'S NAME IN SUITS ON INDEMNITY BOND

Dear Sir:

I am in receipt of your letter of the 19th instant relative to the use of your name as Governor in suit on indemnity bond in the matter of the guardianship of Louis Albert Noble.

In reply I beg to say that since the papers attached show that the bond in question was made to the Governor of the State of Florida and his successors in office, it would be proper for you to allow the use of your name, as Governor, for the benefit of the minor party involved.

December 29, 1936.

CHIROPODY—CONSTRUCTION OF RECIPROCITY CLAUSE

Dear Sir:

This is in reply to your request for my opinion as to the proper construction of that portion of Section 4 of Chapter 15911, Laws of Florida, Acts of 1933, which reads as follows:

"Upon the payment of a fee of \$50.00, a license without examination may be issued to any person licensed to practice chiropody in any other State maintaining equal statutory requirements and extending the same reciprocal privileges to Chiropodists of the State of Florida."

You particularly request my opinion as to the proper construction of the word "may," appearing in the statutory provision above set forth. In other words, is the word "may" permissive in its effect or is it mandatory?

The cardinal principle to be observed in construing statutes is to ascertain and give effect to the legislative intent. It is my opinion that the Legislature intended that a license without examination should be issued to any person paying the required fee, who has been licensed to

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practice chiropody in any other State maintaining equal statutory requirements, and extending the same reciprocal privileges to chiropodists of the State of Florida. When these conditions are met, it is my opinion that the Board must issue a license.

If the chiropodists in this State desire to protect themselves against an influx of chiropodists from other States, they should apply to the Legislature for an amendment of the laws relating to the admission of chiropodists to practice.

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